



**ISPRA**

Istituto Superiore per la Protezione  
e la Ricerca Ambientale



European Union Network for  
the Implementation and Enforcement  
of Environmental Law

## IMPEL CAED WEBINAR on ENVIRONMENTAL LIABILITY DIRECTIVE (ELD) ENFORCEMENT

### *IMPEL PROJECT*

# *Criteria for the Assessment of the Environmental Damage (CAED )*

April 27<sup>th</sup>, 2022

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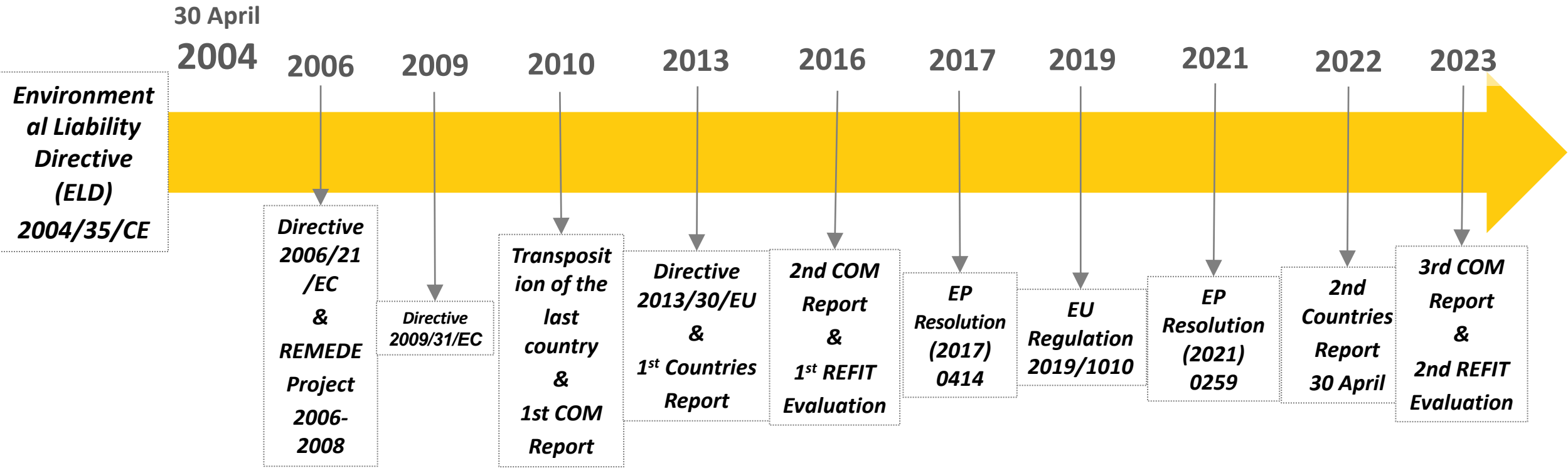
*IMPEL CAED Project Manager*

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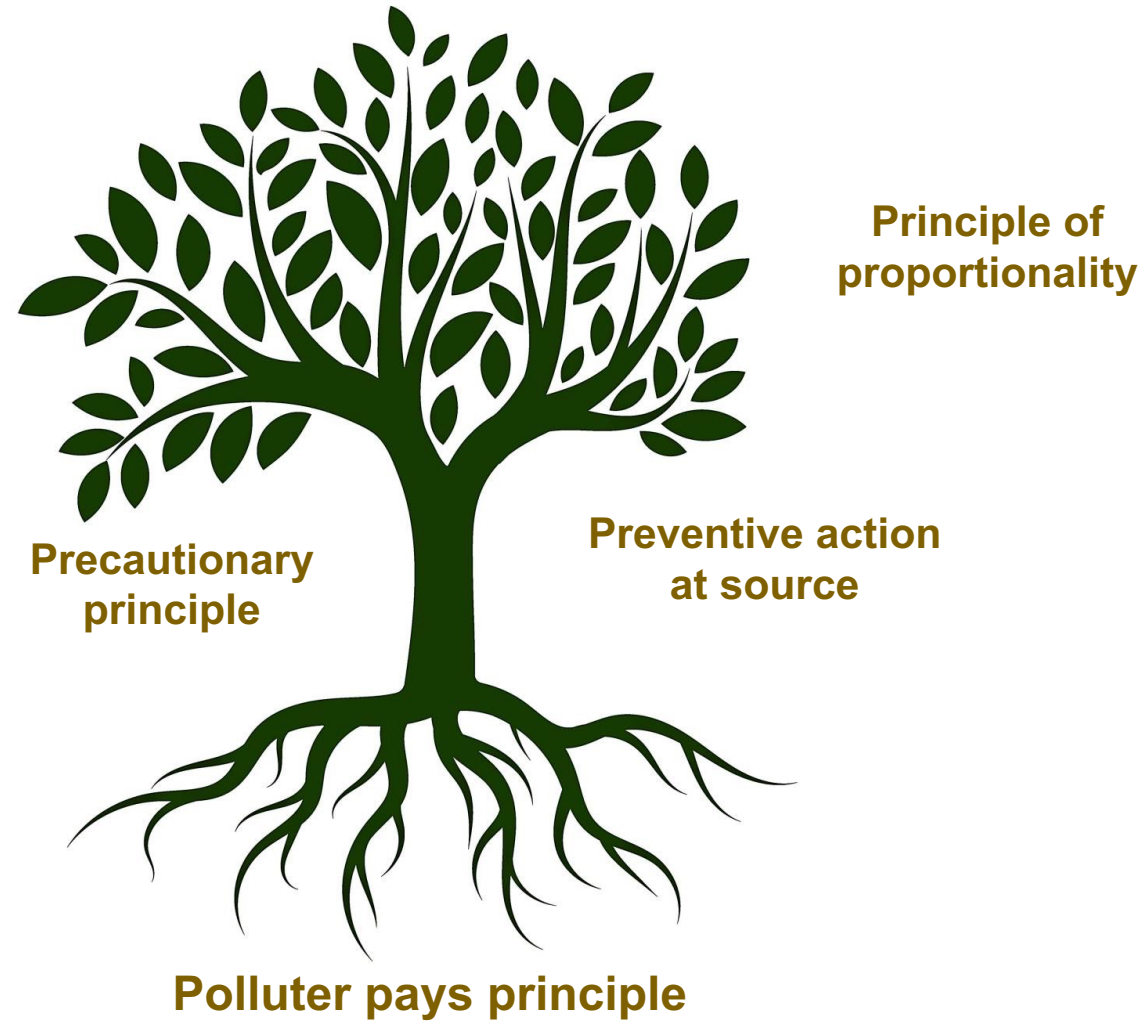
- ✓ CAED Scope and Objectives
- ✓ CAED Products 2019-2021
- ✓ CAED Trainings 2021-2022
- ✓ CAED Plans 2022-2024

## ✓ Brief overview on ELD

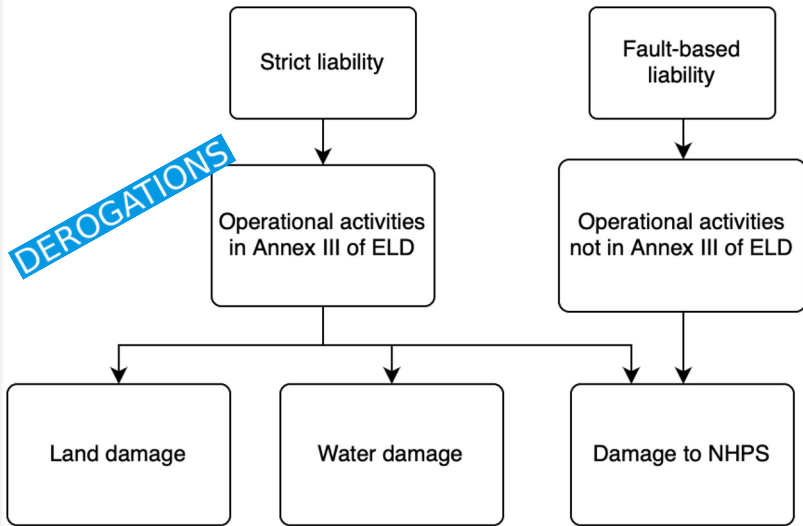
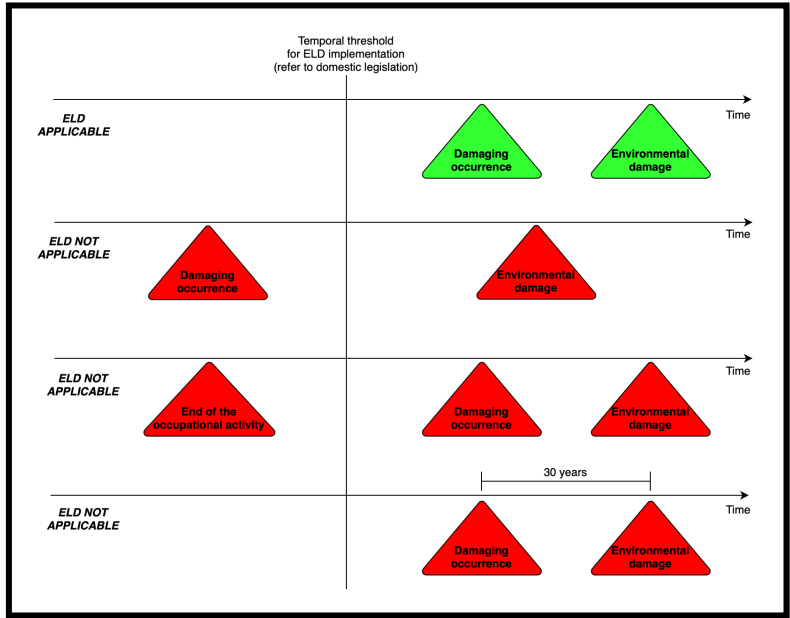
# A BRIEF HISTORY OF ELD



# ***UNDERLYING AND RELEVANT PRINCIPLES TO ELD***

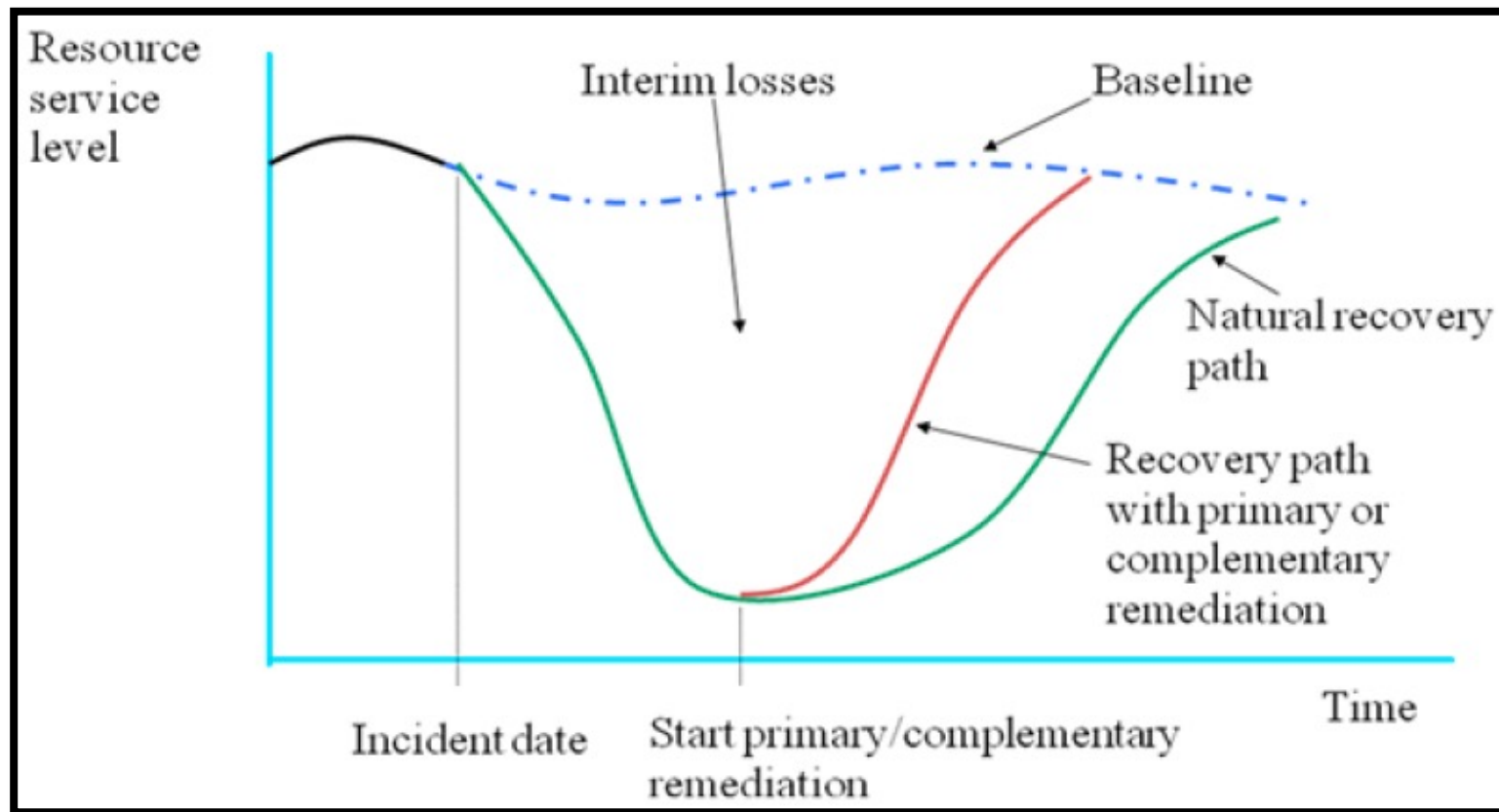


# SCOPE AND APPLICABILITY OF ELD



# PREVENTION AND REMEDIATION REQUIREMENTS

**IMMINENT  
THREAT**





# ADMINISTRATIVE ENFORCEMENT





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# ***IMPEL CAED Project – Foreword and Disclaimer***

## **Foreword:**

This presentation summarises the **contents of the final Report of the 1st year (CAED 2019/18) and the Practical Guide and Practical Tables of the 2nd year (CAED 2020/24)** of the CAED Project, which have been approved by IMPEL and the EU Commission

## **Disclaimer:**

The CAED project products are intended as **reference documents for competent authorities and practitioners**. They do not prescribe what a competent authority should do. Instead, **they aim to provide information to assist competent authorities in making better decisions about the determination of the environmental damage**

# CAED PROJECT SCOPE

- ✓ *Environmental Liability Directive 2004/35/CE (ELD)*
- ✓ *Environmental **damage** and the **imminent threat** of damage to the natural resources protected by the ELD*
- ✓ *Administrative procedure*
- ✓ *Early stages of environmental damage assessment*
- ✓ *Not Included: Quantification of the damage for the equivalency analysis and design of preventive and remedial measures*

# CAED PROJECT OBJECTIVES

- ✓ *Identifying best practices for conducting proper investigations*
- ✓ *Providing a practical guide and useful tools to enhance competent authorities and practitioner's capability*
- ✓ *Identifying criteria for the assessment under ELD*

*The CAED project was included in the Multi-Annual ELD Rolling Work Programme (MARWP) 2021-2024 of the EU Commission, in the area of capacity building activities, in particular as activity 1.3: Help(desks) for practitioners, providing information, Assistance and assessment support for risk and damage evaluations.*

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# ***CAED REPORT CONTENT (2019-2020)***

- ✓ *Analysis of a collection of **32 case studies** of ELD and non-ELD cases in **22 jurisdictions***
- ✓ *Identification of **common and different approaches, strengths, and weaknesses** of the **administrative procedure***
- ✓ *Evaluation of the **guidance** provided by some jurisdiction*

# ***CASE STUDIES included in the CAED Report (2019-2020)***

- ✓ **Austria** - Groundwater contamination by pesticides impacting public drinking water supplies
- ✓ **Bulgaria** - Leakage of a hazardous waste stored in a tank as a result of rupture in the tank wall
- ✓ **Czech Republic** - Contamination of ground water, soil and building constructions by pharmaceuticals production plant
- ✓ **Denmark** - Cultivation of protected grassland habitat within designated Natura 2000 area, Waste of fertilizer in marine waters and to soil and groundwater, Pollution of waterways due to spill of fluid fertilizer
- ✓ **England (UK)** – Discharge of sewage from sewage pumping station to surface water
- ✓ **Estonia** - Solvent leak on railway
- ✓ **Finland** - Surface water contamination by the release of hydraulic oil through cooling water canalisation
- ✓ **Greece** - Destructive fire in a waste treatment recycling facility
- ✓ **Ireland** - Destruction of dry and wet heath protected habitats within a protected area
- ✓ **Italy** - Water over-abstraction from a lake operated by an occupational activity, Surface water contamination by wastewater treatment plant spill, Groundwater contamination by halogenated hydrocarbons, Permanence in the soil of buried waste in disused industrial site, near a water body, [...]
- ✓ **Latvia** - Chemical warehouse fire, chemical spills during fire extinction
- ✓ **Malta** - Laying of alien material in a Special Area of Conservation (SAC)
- ✓ **Portugal** – Gasoline leak at a filling station
- ✓ **Republic of Croatia** - Land contamination by illegal dumping of waste by occupational activity on unregulated site
- ✓ **Scotland (UK)** – Major fish kill from release of chemical into waterbody
- ✓ **Slovakia** - Operation of water works small hydroelectric power plant
- ✓ **Slovenia** - Protected nature, land and water pollution due to a massive fire of mostly hazardous waste
- ✓ **Spain** - Slope detachment from a mine waste dump, Soil and groundwater pollution by a fuel station in an urban environment
- ✓ **Sweden** - Groundwater contamination of drinking water supply by fire-fighting foam
- ✓ **Switzerland** - Cargo train accident with run-off of hazardous chemicals



# CAED REPORT CONTENT (2019-2020)

## Key Findings and Lessons Learnt

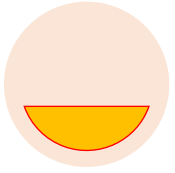
- ✓ *Speed of initial investigation*
- ✓ *Sound Evidence Base*
- ✓ *Availability of **procedures/guidelines***
- ✓ *Lack of **precedent***
- ✓ *Importance of **routine inspections***
- ✓ ***Cooperation and Coordination** of public bodies*
- ✓ ***Communications** with operator*

# CAED REPORT CONTENT (2019-2020)

## Training needs

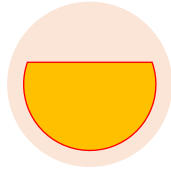
- ✓ *Practical cases and experience sharing*
- ✓ *Technical, procedural, organisational training*
- ✓ *Training to mixed groups of **different authorities** (national and local)*
- ✓ *All inspectors should be trained on screening ELD cases*

# DETERMINATION OF DAMAGE/THREAT



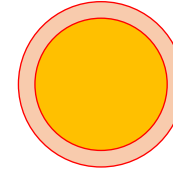
## SCREENING PROCESS

The **screening** of **cases of potential environmental damage** and imminent threat of damage



## DETERMINATION OF CLUES

The **determination of clues** for the **identification of candidate cases of environmental damage** and imminent threat of damage



## DETERMINATION OF EVIDENCE

The **determination of evidence** for the **confirmation of cases of environmental damage** and imminent threat of damage

*The three steps may or may not be conducted in a sequential manner*

# CAED Practical Guide & Tables (2020-2021)

## Purposes

- ✓ *Screen potential ELD cases/non-ELD cases*
- ✓ *Determination of the clues of environmental damage to decide if further investigations are required to determine evidence of damage*

*In fact...*

The screening and the identification of the potential cases of environmental damage under ELD can save **effort, time and money** on unsuccessful assessments, because the collection of **sound evidence** can be an expensive and time-consuming process

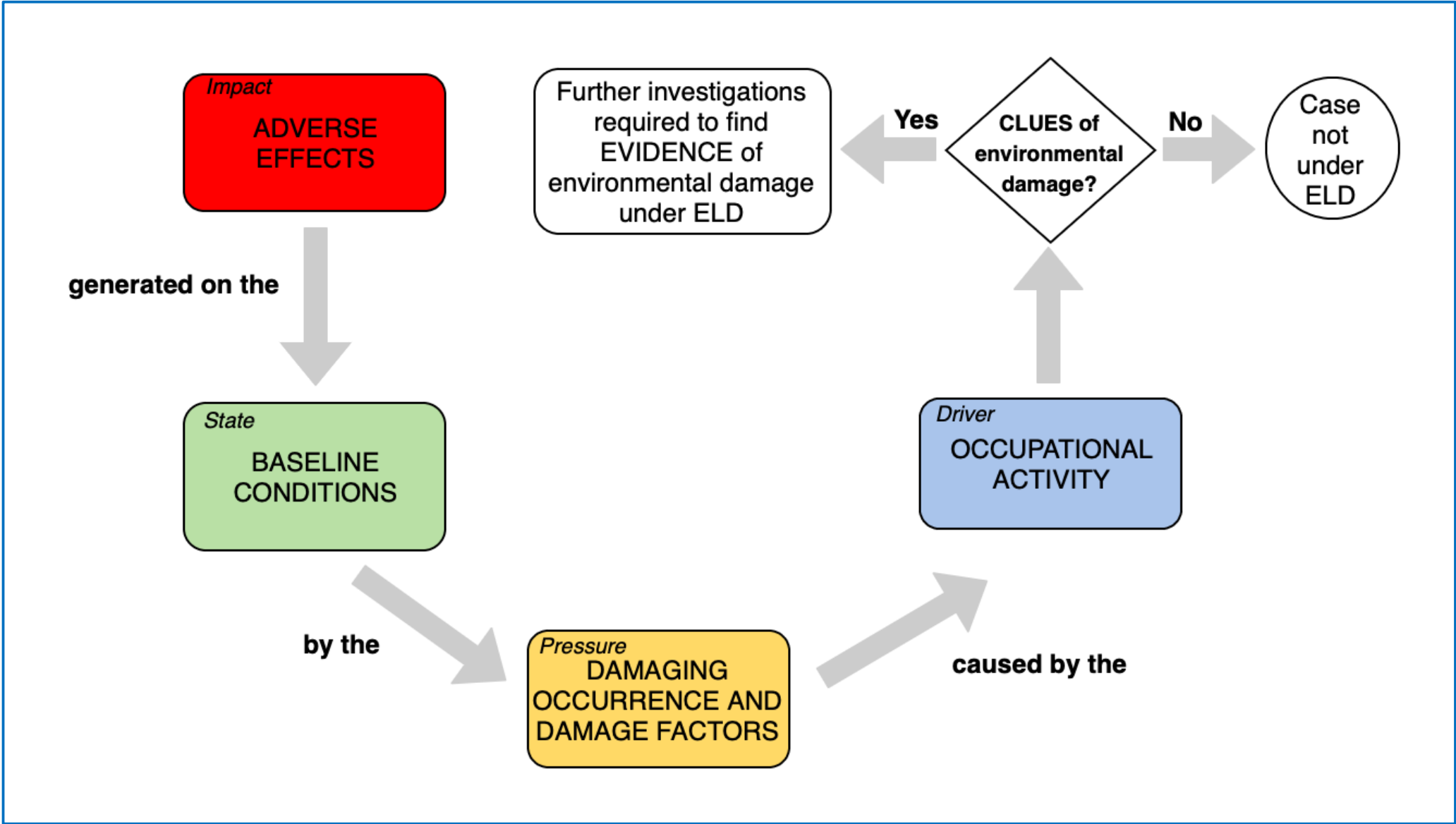


# ***CAED Practical Guide & Tables (2020-2021)***

## **Products**

- ✓ ***Practical Guide*** (*DPSIR model adapted, Decision-making flowcharts*)
- ✓ ***Practical tables*** (*including selected and pre-defined indicators*)
- ✓ ***Examples of the use of the Practical tables*** (*case studies*)

# DPSIR Model adapted



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# ***Trainings on CAED Products (2021-2022)***

Date	Events
27 Oct 2021	Trial Test training session to CAED project members (about 15 attendees)
23 Nov 2021	1 <sup>st</sup> Training session to a wider group (about 40 attendees)
9 Feb 2022	2 <sup>nd</sup> Training session to a wider group (about 40 attendees)
27 Apr 2022	Final Webinar on ELD enforcement related topics

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# ***WHAT'S PLANNED in 2022-2024***

- ✓ ***Practical Guide with criteria and further developed practical tools for:***
  - ***Clues and evidence of damage assessment***
  - ***Imminent threat of damage assessment***
  - ***Causal-link assessment***
- ✓ ***Training and capacity building activities & knowledge dissemination***

# ***Project Group in 2022-2023***

- ✓ ***CAED project 2022-2023 starts on June 1<sup>st</sup>, 2022***
- ✓ ***We are 24 practitioners of core group + project members***

***If you are from IMPEL Network or not and you like to join us...***

***...to contribute to guides/tools or conduct trainings...***

***...SEND ME A REQUEST by email!***

# ***SOME REFERENCES FOR ELD IMPLEMENTATION and ENFORCEMENT***

- *EU Commission, 2021, 'Commission Notice - Guidelines providing a common understanding of the term 'environmental damage' as defined in Article 2 of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, C(2021) 1860 final'*
- *V. Fogleman, Stevens & Bolton LLP, Prof. of Law, Cardiff University School of Law and Politics, 2020, 'Facilitating Enforcement of the ELD an ongoing follow-up study'*
- *COWI, Prospect, Justice and Environment, Sandor Fulop, 2020, 'Improving implementation and the evidence base for the ELD'*
- *V. Fogleman, Stevens & Bolton LLP, Cardiff Univ. School of Law and Politics, 2020, 'Improving financial security in the context of the Environmental Liability Directive'*
- *F. Andreotti et al., 2019, 'Criteria for the assessment of the environmental damage project - final report'*
- *K. Bradley et al., 2018, Financial Provisions for Environmental Liability – A Practical Guide'*
- *Milieu Ltd, 2017, 'Towards a common understanding of ELD key terms and concepts - Support in the implementation of REFIT actions for the ELD – phase 1'*
- *Commission Staff Working Document, 2016, 'REFIT Evaluation of the Environmental Liability Directive'*
- *Hulla & Co Human Dynamics, 2015-2016, 'Handbook on the Implementation of EU Environmental Legislation'*
- *Fogleman V., 2014, 'BIO Intelligence Service - ELD Effectiveness: Scope and Exceptions'*
- *DG Environment, Stevens & Bolton LLP, 2013, BIO Intelligence Service, 'Implementation challenges and obstacles of the Environmental Liability Directive, Final report'*
- *Efttec, Stratus Consulting, 2013, 'Environmental Liability Directive: Training Handbook and Accompanying Slides'*

***THE MORE ENFORCED,  
THE MORE COMPLIED WITH!***  
***THANKS FOR YOUR KIND ATTENTION!***

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*Links to all CAED Project products can be found here:*

<https://www.impel.eu/en/projects/criteria-for-the-assessment-of-the-environmental-damage-caed>

