

To: Environmental Liability TF
Cc: General Liability SG
From: Carmen Bell
Date: 4 February 2010
Reference: NLI-ENV-10-002

Subject: ELD - BioIS Final Report

| Objective

- Review final BioIS report and assess/prepare comments in anticipation of the CEA's next Environmental Taskforce meeting.

| Background

- The European Commission (EC) has to report by April 2010 on the effectiveness of the Environmental Liability Directive (ELD, 2004/35/EC) in terms of actual remediation of environmental damages and on the availability, at reasonable costs and conditions, of insurance and other types of financial security.
- A study on the implementation effectiveness of the ELD and related financial security issues was concluded last year by the EC's consultancy on the ELD, Bio Intelligence Services (BioIS). BioIS presented its study findings at the EC's ELD "National Experts Meeting" on 12 November 2009.
- The CEA also presented its position on ELD-related financial security issues and its comments on the BioIS study at the EC's 12 November meeting (NLI-GLI-09-058).
- Pursuant to the EC's invitation, the CEA submitted written comments on the draft BioIS report to the EC/BioIS and requested that its comments be considered when finalising said report for review by the EC's national experts in January 2010 (see NLI-ENV-09-065 and NLI-ENV-09-066).

| Recent Developments

- The EC has submitted to the CEA Secretariat the final report from BioIS, "Study on The Implementation Effectiveness of the Environmental Liability Directive (ELD) and Related Financial Security Issues", will be available on the DG Environment's website shortly (NLI-ENV-10-003).
 - The EC advised the CEA Secretariat that this final version of the BioIS report is public and that the CEA may circulate it amongst its members.
- As DG Environment has accepted the final BioIS report, it is *not possible* to edit this report further. However, the EC welcomes any relevant comments that the CEA may wish to still point out.
- The EC represented that the BioIS study will provide material for the EC's report due in April 2010, but that it will not serve as the EC's actual report.
- The EC further noted that it has received feedback from the national experts in terms of a questionnaire they were asked to complete, though most of the larger countries have not yet responded. The EC will review as to what it has received so far and will provide the CEA with whatever information it can for the time being.

| CEA Secretariat's Analysis of the final BioIS Report

- The CEA Secretariat has prepared a comparison chart to illustrate the amendments and edits made to the BioIS report, "Study on The Implementation Effectiveness of The Environmental Liability Directive (ELD) and Related Financial Security Issues" (NLI-ENV-10-004).
- Upon reviewing the final BioIS report, the CEA Secretariat provides that the following could pose concerns for the (re) insurance industry:
 - Despite the CEA's comments that there was too much focus on the "US experience" and that its negative aspects should not be minimised (see NLI-ENV-09-066), BioIS has not at all revised its report in this respect.
 - On page 52, Figure 4, "MS assessment of their national environmental insurance market", remains unchanged and still assigns the labels "Basic", "Good" and "Advanced" to the environmental insurance markets of various Member States. This example is concerning because the categories are not well-defined and could be subject to varying interpretations (eg what constitutes a "good" market?)
 - Section 9.7.1 lists proposals for raising operator awareness of the ELD, one of which is for industry associations and federations to prepare **sector-specific workshops** where *"other stakeholders, such as competent authorities and providers of financial security instruments should be invited in order to ensure a fruitful discussion"*. The proposal goes on to say that *"industry association and federations need to be made aware of the role they should play in informing their members about the ELD and its implications"* (p. 93).
 - While this proposal can be viewed as a positive initiative (eg the sharing of information and collaboration between the industry/operators and other stakeholders), this proposal could also pose the danger of imposing an excessive and/or misplaced responsibility upon the (re)insurance industry to educate operators on their ELD obligations. If this proposal were to be considered, the framework and objective of such workshops should be clearly outlined and the expectations of other stakeholders clearly defined.
 - Section 9.7.1 further proposes that organising workshops for brokers would be beneficial as they *"would encourage operators to insure themselves against ELD liabilities by making them aware, through their brokers, of potential gaps in their insurance cover"*.
 - This proposal may be a positive initiative in that it again welcomes the sharing of information and education about the ELD. However, in accordance with the CEA's written comments on the previous BioIS report, the CEA may wish to advise the EC that lack of ELD awareness by operators is not the sole reason for the presently low demand for ELD-related insurance products (eg recent economic crisis has discouraged spending). Further discussion by the taskforce on this issue is warranted, as the CEA may wish to respond on this proposal but not in a manner that convinces policymakers that mandatory financial security might be a supplemental solution.
 - The report makes the rather ambitious recommendation of sharing details about ELD cases amongst all industry forms, including national federations and associations, brokers and insurers, and that this information could be shared with newspapers and journals (p.95).
 - The CEA might wish to comment on the limitations of such a proposal (eg sensitive data not publicly available, need to verify accuracy of case details) and, to the extent that some information is public, how to implement a workable framework for sharing it.
- The CEA Secretariat proposes to outline these concerns in order to present and discuss them with DG Environment representative Alexandra Vakrou at the Environmental Taskforce meeting on 10 February.

| Next Steps

... at CEA level

- **10 February 2009:** CEA Environmental Taskforce meeting with Alexandra Vakrou of DG Environment.

.. at EC level

- **Early February 2010:** Revised deadline for feedback by EC national experts.
- **30 April 2010:** Deadline for EC report on the ELD.

| Request for Input

Please submit to the CEA Secretariat (bell@cea.eu) by cob **Tuesday, 9 February 2009**, whether you

- agree with the CEA Secretariat's analysis on the BioIS final report, including the concerns about the "proposals" for raising operator awareness of the ELD;
- agree with the CEA Secretariat's recommendation to discuss these concerns with Ms. Vakrou at the 10 February Environmental Taskforce meeting; and
- have any additional comments on the final BioIS report (NLI-ENV-10-003) which you would like to address with the EC or discuss at the CEA's Environmental Taskforce next meeting on 10 February.