

**Comparison Chart for Final Bio Intelligence Report on the ELD:
 “Study on The Implementation Effectiveness of The Environmental Liability Directive (ELD) and
 Related Financial Security Issues” (November 2009)**

Memo Reference: NLI-ENV-10-002

PAGE NUMBER	SECTION and AMENDMENTS
P. 28	<p>Section 3.2.1, “Encouraging the Development of Financial Security Instruments”</p> <p>A paragraph was deleted which listed two regions of Belgium (Brussels and Wallonia) and the country of Sweden as Member States that had not taken any measures to encourage development of financial security instruments for the ELD.</p>
P. 30	<p>Section 3.2.2, “Mandatory Financial Security”</p> <p>Greece and Portugal have been added to the list of countries that have introduced provisions for mandatory financial security in their ELD transpositions.</p>
P. 38	<p>Section 4, “Developments in The USA”</p> <p>Paragraphs have been shifted around, but the wording remains the same.</p>
P. 41	<p>Section 4.1.1, “Financial Security Mechanisms”</p> <p>BioIS specifies that the environmental insurance policies discussed in Section 5 of the report were not pursuant to any legislative mandatory financial security provisions, as none were in force at the time of the report. This text further offers some characteristics of legislative mandatory financial security provisions.</p>
P. 50	<p>Section 4.1.7, “Lessons from The US Experience on Implementing Environmental Liability Regime”</p> <p>The following text has been added to the chart titled “Key differences between ELD and CERCLA¹”:</p> <ul style="list-style-type: none"> • a section on the scope of natural resource damage (p. 48); • text on the permit defence and defence for natural resources ‘written off’ included in the “Defences” section (the original section on “Permit defence” is deleted and included here instead).
P. 61	<p>Section 5.2.1.5, “Nuclear Activities”</p> <p>A reference to liability for nuclear risks under Community legislation deleted. Text now only provides that Article 4(4) of the ELD does not cover environmental damage caused by nuclear risks and activities <i>if such liability is covered by the “major nuclear Conventions”</i> .(p. 60)</p> <ul style="list-style-type: none"> • The following text is further added: “<i>Nuclear activities involving nuclear installations are, therefore, not covered by the ELD and do not constitute Annex III-activities</i>” .
P. 64	<p>Section 5.3, “Relevant Guidelines and Models”</p>

¹ Comprehensive Environmental Response, Compensation, and Liability Act, aka US Superfund (enacted in 1980)

	<p>The list of countries that have developed guidelines for ELD cover (eg available thresholds) includes the following: <i>Belgium (Wallonia), Czech Republic, Hungary, Ireland, Latvia, Malta, the Netherlands, Poland, Slovakia and the UK.</i></p>
P. 68	<p>Section 6.2, "Overview of Different Instruments"</p> <p>New reference to instruments "<i>based on the most commonly used alternative security instruments in the USA as well as those most frequently named by stakeholder groups as pertinent alternatives to insurance in the European context</i>".</p>
P. 75	<p>Section 7.1, "Awareness of ELD and Related Liabilities"</p> <p>Text added to note that "<i>awareness of ELD-related liabilities is still relatively low amongst some clients and regional brokers</i>" and "<i>many firms remain unaware of their new liabilities</i>" (citing the International Underwriting Association and international law firm Freshfields Bruckhaus Deringer).</p>
P. 79	<p>Section 7.2, "Risk Coverage"</p> <p>Footnote 19 added to clarify that the British National Farmers Union Mutual has extended all of its products and public liability policies to cover the ELD.</p> <ul style="list-style-type: none"> • This representation was made by the UK national expert at the EC ELD Experts Meeting on 12 November 09.
P. 83-84	<p>Section 8.3, "Actual and Potential ELD Cases"</p> <p>Text added to Section 8.3.3, "Germany", which briefly summarises one ELD case which occurred in Germany.</p> <ul style="list-style-type: none"> • Case information from the CEA's German market update presentation at the EC ELD Experts Meeting on 12 November 09.
P. 92-93	<p>Section 9.7.1, "Raising Awareness of Operators"</p> <p>Text amended substantially to discuss proposals to improve operator awareness about the ELD, including:</p> <ul style="list-style-type: none"> • a more focused concentration on sectors with regard to study questionnaires; • sector-specific information material for operators; • sector-specific workshops with industry associations and federations; • a new, sector-specific questionnaire for industry associations and federations which focuses on the associations more than its actual members; • workshops for brokers; • information for operators about financial security products for ELD liabilities; • information for providers of alternative financial security instruments about activities excluded from ELD-related insurance products so they may approach those sectors directly.
P. 95	<p>Section 9.7.4, "Further Development of ELD Case Database"</p> <p>The statement that "<i>the first significant environmental incident</i>" would have an important effect on the development of the financial security market has been amended to include the more general phrase "<i>media coverage</i>". (p.95). The amended text further notes that "<i>the occurrence of such incidents will not only raise awareness but will allow insurers to develop expertise in handling ELD</i></p>

	<p><i>claims</i>" and suggests that published details of ELD cases can help raise operator awareness.</p> <ul style="list-style-type: none">• The above amendments mirror the CEA's written comments to the EC/BioIS and are consistent with the CEA position that one, single event is insufficient to raise operator awareness about the ELD and that more focus should be given to the gathering of data and statistics from various ELD cases.
P. 102	The Italian Pool was added to the report's list of Contacts/Acknowledgements in Section 11.