

## Capacity-building event

### Liability for environmental damage: from policy design to application

## *IMPEL PROJECT*

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

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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), the Practical Guide and Practical Tables of the 2nd year (CAED 2020/24), the Training material of the 3rd year (CAED 2021/15)** 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 does 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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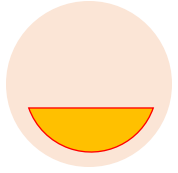


# ***CAED REPORT CONTENT (2019-2020)***

- ✓ *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*

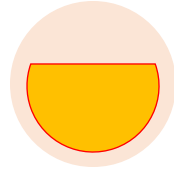


# DETERMINATION OF DAMAGE/THREAT



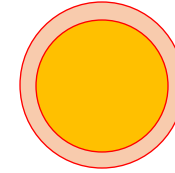
## SCREENING PROCESS

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

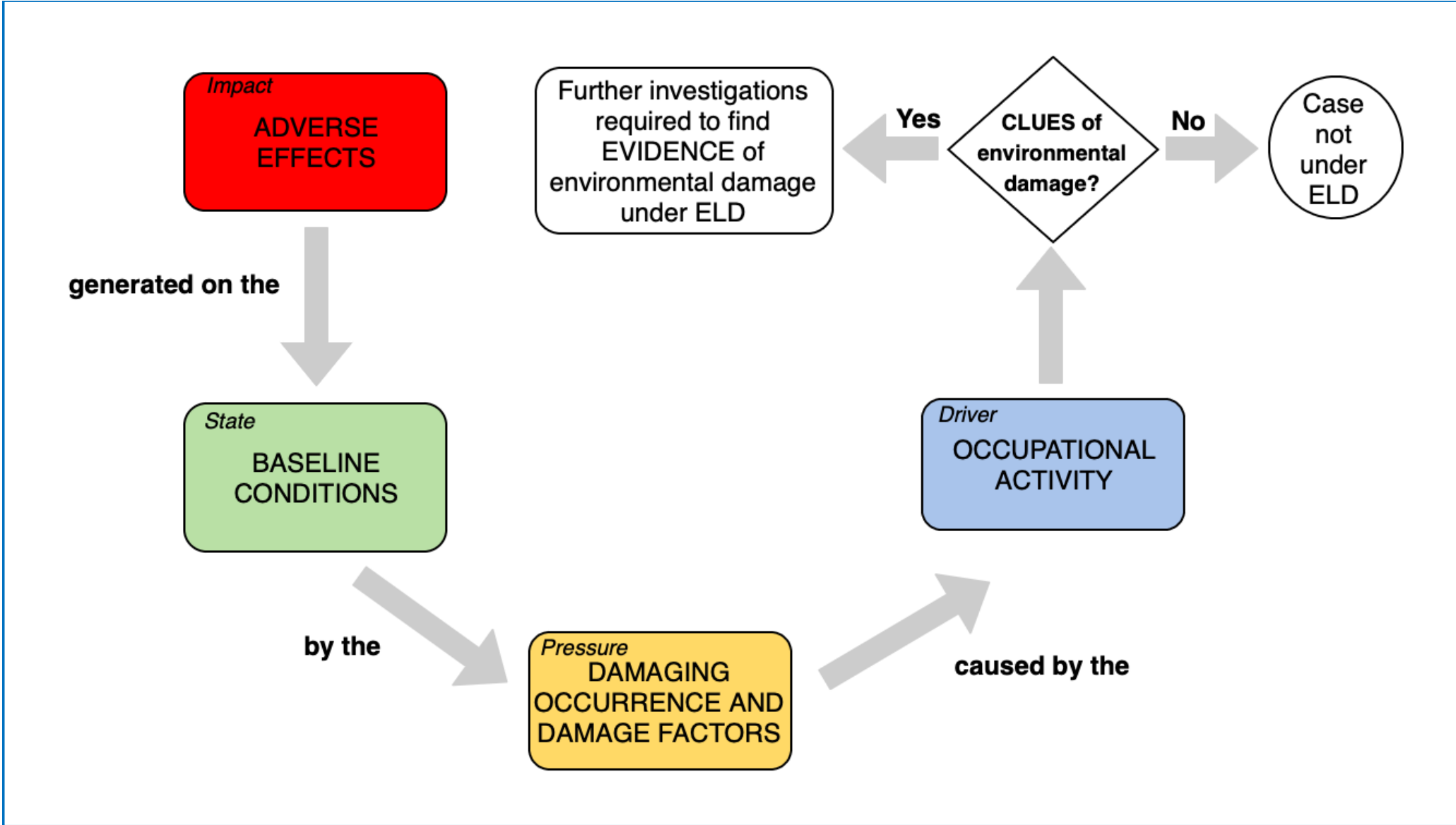


# ***CAED Practical Guide & Tables (2020-2021)***

## **Products**

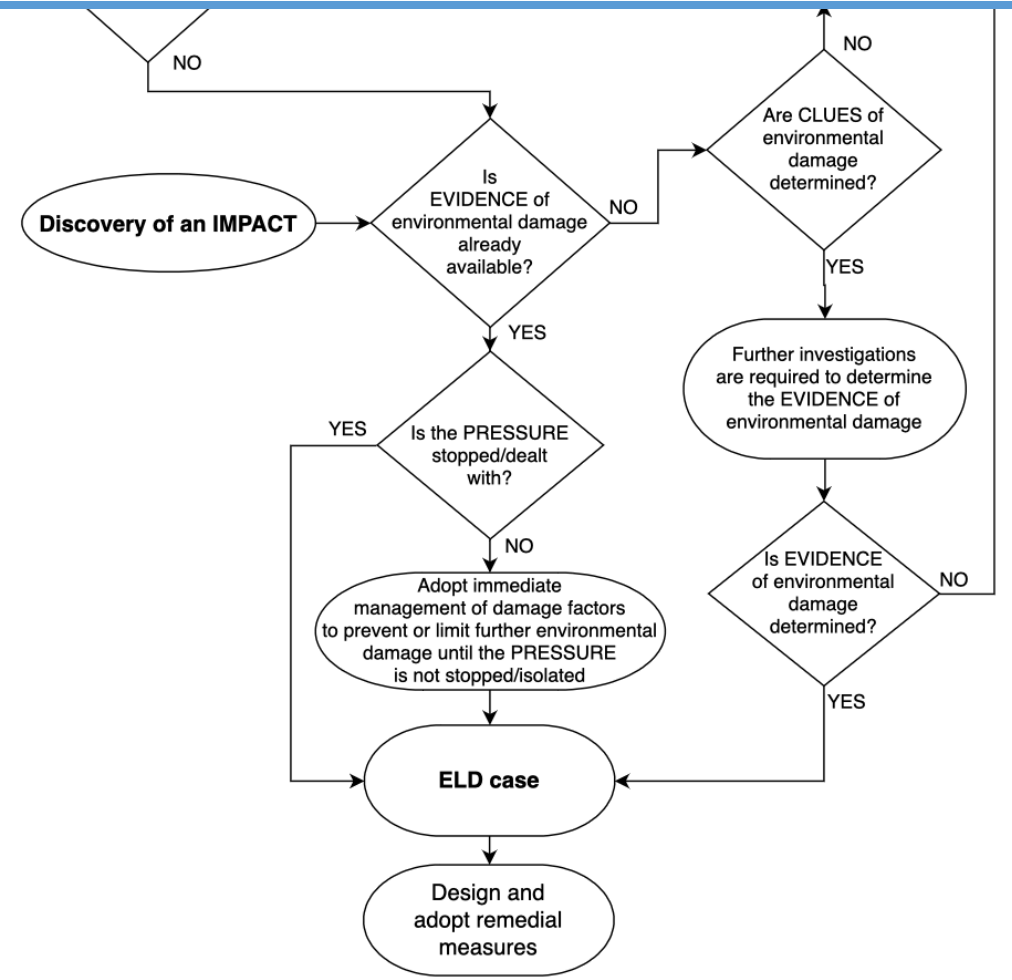
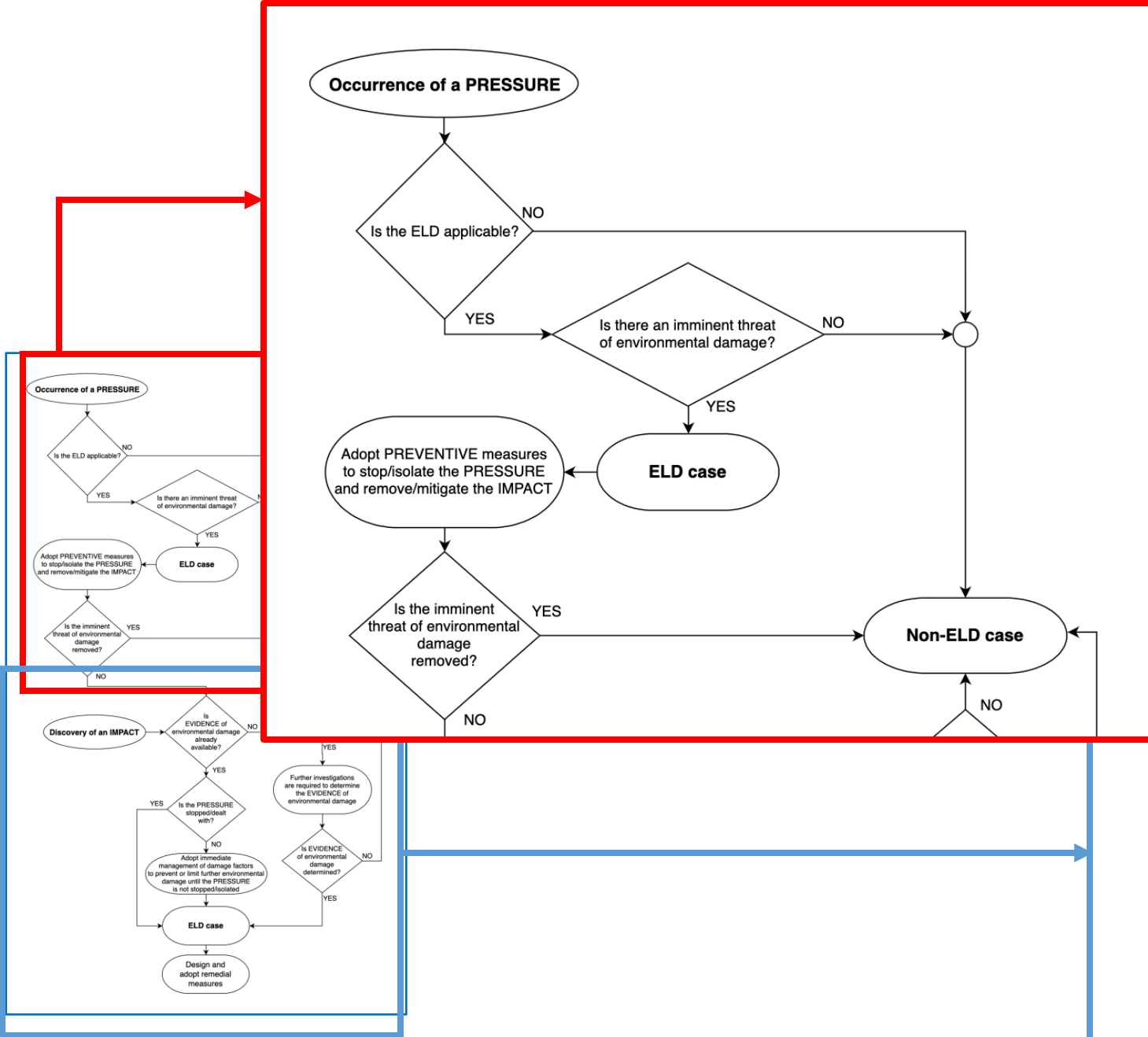
- ✓ ***Practical Guide*** (*DPSIR model adapted, Decision-making flowcharts*)
- ✓ ***Practical tables*** (*including selected and pre-defined indicators*)
- ✓ ***5 examples of the use of the Practical tables*** (*case studies*)

# DPSIR Model adapted



# Decision-making flowcharts

## General

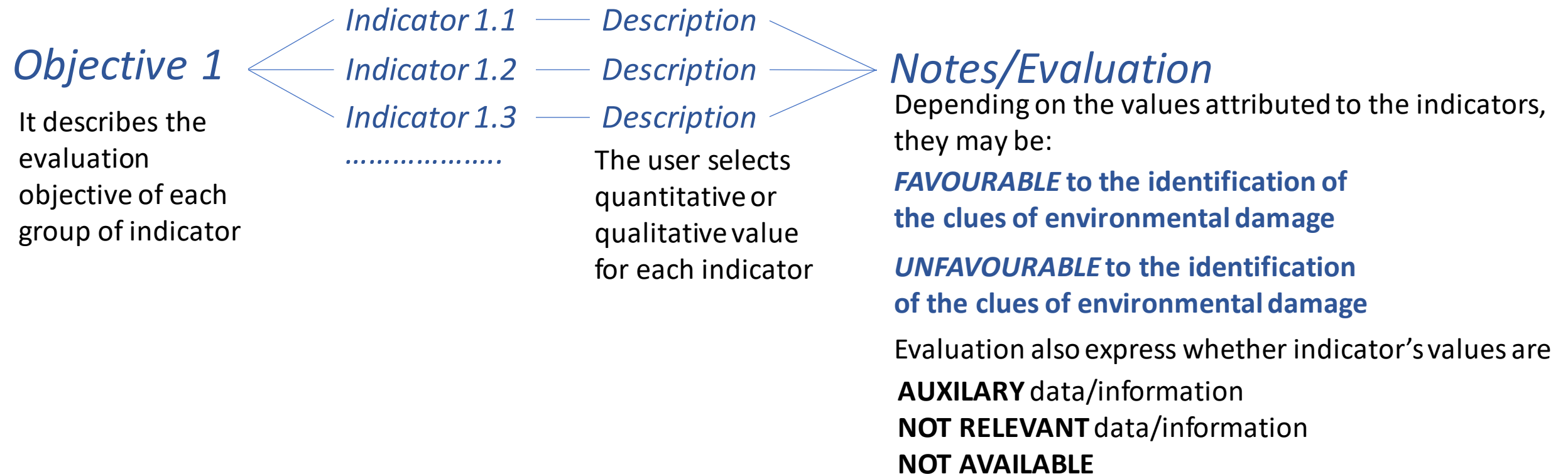


# Methodology for the determination of clues

For each component of the DPSIR model, PRACTICAL TABLES containing a list of pre-defined indicators was developed

The value or the description (based on the available information) attributed to each indicator should drive the user toward the identification, or not, of the clues of damage

## Structure of the Practical tables

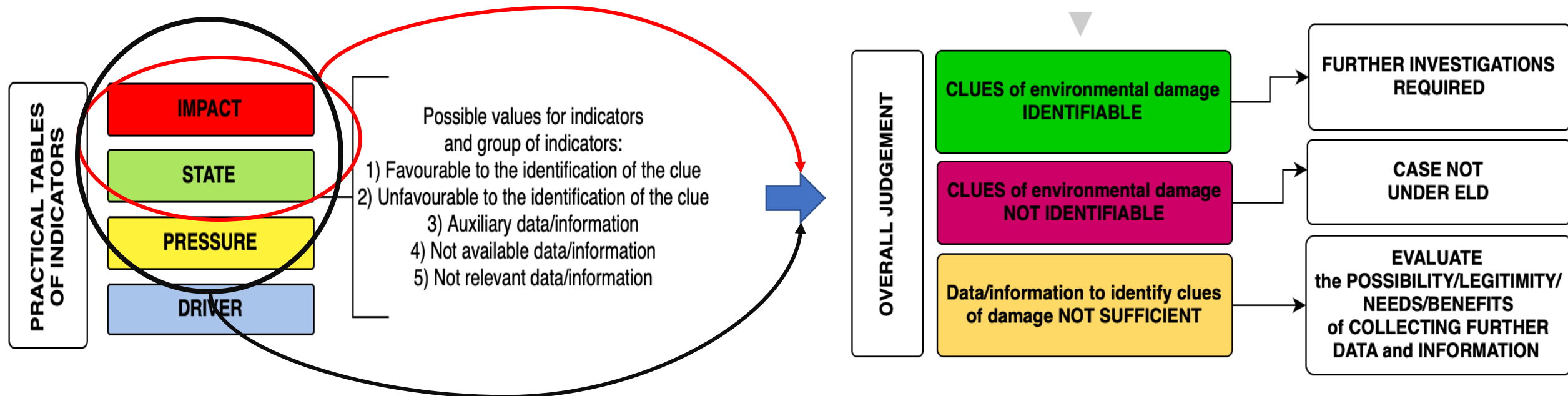


# Methodology for the determination of clues

## The Overall Judgement

Taking into account the evaluation for each indicator or group of indicators, the determination of clue process may result in an overall judgment of the case investigated

Indicators that describes **IMPACT (Adverse effect)** and **STATE (baseline)** may be sufficient to express the overall judgment



When information on **IMPACT** and **STATE** are not sufficient, data relating to **PRESSURE** (i.e. hazardousness, magnitude, duration, ...) may be fundamental to determine the existence, or not, of clues of damage

# Practical Tables - NATURAL HABITATS PROTECTED SPECIES

## IMPACT

OBJECTIVE	INDICATORS	DESCRIPTION/THRESHOLDS	NOTES	EVALUATION	OVERALL JUDGEMENT
Precondition for the use of the tables for NHPS  <b>1</b>	IMPACT ON "PROTECTED SPECIES AND NATURAL HABITATS", namely (par. 3, art. 2 of ELD):				
	(a) the species mentioned in Article 4(2) of Directive 79/409/EEC (Birds Directive) or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC (Habitat Directive);				
	(b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and				
	(c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives;				
		LARGE SCALE ASSESSMENT			
		LOCAL SCALE ASSESSMENT			
		Only Natura 2000 Site			
		Inside or outside Natura 2000 Sites			

## STATE

OBJECTIVE	INDICATORS	DESCRIPTION/THRESHOLDS	NOTES (European Level)	NOTES (National Level)	NOTES (Local/Site Level)	EVALUATION	OVERALL JUDGEMENT
			<b>3</b>				



# Practical Tables - PRESSURE (ALL)

OBJECTIVE	INDICATOR	DESCRIPTION	NOTES	EVALUATION	OVERALL JUDGEMENT
Precondition for the use of the tables for PRESSURE	PRESSURE which complies with the temporal application of ELD (art. 17)				
<b>LAND</b> (this section refers only to Land)					
Describe the general characteristics and evaluate relevance, reliability and quality of data/information on the damaging occurrence and/or damage factors	<p>1</p> <p>Type of damaging occurrence <i>E.g. forest cuts, wood/plant fires, collection or removal of fauna/flora, water/groundwater withdrawals, civil works, extraction of quarry material, beach nourishment, discharges/spillages into surface waters/groundwater/land, abandoned/buried hazardous waste, unregulated/uncontrolled landfill, creation of road structures and setting up of renewable energy production plants, etc.</i></p>	<p>2</p> <p>Data/information not available</p> <p>Non-compliance with obligations/emission limits, illegal activity (specify it)</p> <p>Accident/Incident (specify it)</p> <p>Other (specify it)</p>			
	Timeline of the damaging occurrence	<p>Data/information not available</p> <p>Ceased</p> <p>On-going – continuous</p> <p>On-going – intermittent</p>			
	Natural resource impacted by the damaging occurrence	<p>3</p> <p>Data/information not available</p> <p>Data not relevant for the type of pressure identified</p> <p>Air (specify it)</p> <p>Water (specify it)</p> <p>On, in, under land (specify it)</p> <p>Protected habitats or species</p> <p>Other (specify it)</p>			
	Location of the damaging occurrence	<p>Data/information not available</p> <p>(Specify geographical coordinates and any useful information to demonstrate a connection with the site or route of the occupational activity: e.g. onshore/offshore, upstream, upwind, adjacent with, overlying, etc.)</p>			
	Spatial extent of the damaging occurrence and damage factors	<p>Data/information not available</p> <p>Localised/Point source (specify it)</p> <p>Widespread/Diffuse (specify it)</p>			
	Type of adverse effect to the natural resource	<p>Data/information not available</p> <p>Direct (specify it)</p> <p>Indirect (specify it)</p>			
	Accuracy and reliability of data including sampling and analysis, procedures and quality assurance	<p>Data/information not available</p> <p>Adequate (Specify why: e.g. sampling and analysis of substances compliant with ISO/IEC 17025, sampling and analysis of hazardous wastes pursuing national/international standards, etc.)</p> <p>Not adequate (specify why)</p>			

# Practical Tables - DRIVER (ALL)

OBJECTIVE	INDICATOR	DESCRIPTION	NOTES	EVALUATION	OVERALL JUDGEMENT
<p><i>Objective</i></p> <p>Evaluate the link between the occupational activity and the adverse effects</p>	<p>Consistency of substances and quantities used / handled / produced by the occupational activity with the damage factors/adverse effects</p>	<p>Consistent with the characteristics of the damage factors/adverse effects</p> <p>Not consistent with the characteristics of the damage factors/adverse effects</p> <p>No substances used/handled/produced</p> <p>Not relevant</p> <p>Data/information not available</p>	<p>Values of Indicators</p>	<p>Evaluation on the single objective</p>	<p>Judgement on the DRIVER component</p>
	<p>Consistency of operations carried out at the occupational activity with the damage factors/adverse effects</p>	<p>Consistent with the characteristics of the damage factors/adverse effects</p> <p>Not consistent with the characteristics of the damage factors/adverse effects</p> <p>Not relevant</p> <p>Data/information not available</p>			
	<p>Consistency of waste type, composition and quantities managed / produced with the damage factors/adverse effects</p>	<p>Consistent with the characteristics of the damage factors/adverse effects</p> <p>Not consistent with the characteristics of the damage factors/adverse effects</p> <p>No waste managed/produced</p> <p>Not relevant</p> <p>Data/information not available</p>	<p>2</p>		
	<p>Consistency of pumping / diversion / or other surface or groundwater flow modification with the damage factors/adverse effects</p>	<p>Consistent with the characteristics of the damage factors/adverse effects</p> <p>Not consistent with the characteristics of the damage factors/adverse effects</p> <p>There are no pumping / diversion / or other water flow modifications</p> <p>Not relevant</p> <p>Data/information not available</p>			
	<p>Consistency of type, composition and quantities of discharges to water or land with the damage factors/adverse effects</p>	<p>Consistent with the characteristics of the damage factors/adverse effects</p> <p>Not consistent with the characteristics of the damage factors/adverse effects</p> <p>There are no discharges to water or land</p> <p>Not relevant</p> <p>Data/information not available</p>			
	<p>Potential exposure of natural habitats and protected species, surface waters, groundwater or land to adverse effects (only affected resources have to be considered)</p>	<p>Yes (specify why)</p> <p>No (specify why)</p> <p>Data/information not available</p> <p>Not relevant</p>			
	<p>Presence of other activities which could be associated with the damaging occurrence/damage factors or the type of damage factors/adverse effects</p>	<p>Yes (specify why)</p> <p>No (specify why)</p> <p>Data/information not available</p> <p>Not relevant</p>			

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

<b>Date</b>	<b>Events</b>
<b>27 Oct 2021</b>	Trial Test training session to CAED project members (about 15 attendees)
<b>23 Nov 2021</b>	1 <sup>st</sup> Training session to a wider group (about 40 attendees)
<b>9 Feb 2022</b>	2 <sup>nd</sup> Training session to a wider group (about 40 attendees)
<b>27 Apr 2022</b>	Final Webinar on ELD enforcement related topics (about 70 attendees)

# *Speakers of training sessions*

- 1. Kim Bradley**                      **United Kingdom/ Scottish Environmental Protection Agency (SEPA)**
- 2. Linda Dalton O'Regan**                      **Ireland/ Environmental Protection Agency (*for the 1<sup>st</sup> training*)**
- 3. Daniele Montanaro**                      **ISPRA (Italian Institute for Environmental Protection and Research)**
- 4. Francesco Andreotti**                      **ISPRA (Italian Institute for Environmental Protection and Research)**



# *Speakers of the Webinar*

1. **Olga Kurpisz, DG ENV.E4. Compliance & Better Regulation**
2. **Kim Bradley, Scottish Environment Protection Agency (SEPA), United Kingdom**
3. **Stavroula Pouli, Ministry for the Environment, Energy and Climate Change, Hellenic Republic (Greece)**
4. **Isaac Sánchez Navarro, Ministry for the Ecological Transition and the Demographic Challenge, Spain**
5. **Regina Vilão, Portuguese Environment Agency, Portugal**
6. **Roberto Ferrari, “Pool Ambiente” Consortium, Insurance and Reinsurance Pool, Liability for Damage to the Environment, Italy**
7. **Miljenka Klicek, State Inspectorate, Regional Office Varaždin, Rep. of Croatia**
8. **Daniele Montanaro, Environmental Technologist, Italian Institute for the Environmental Protection and Research (ISPRA), Italy**
9. **Francesco Andreotti, Italian Institute for the Environmental Protection and Research (ISPRA), Italy**



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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***



# ***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'*
- *Eftec, Stratus Consulting, 2013, 'Environmental Liability Directive: Training Handbook and Accompanying Slides'*



***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>**