

EXPLAINED: MINIMUM GUARANTEES OF A COMPENSATION RIGHT IN THE IED

The EU Industrial Emissions Directive, regulating pollution from the EU's largest industrial activities, is currently being revised by the EU decision makers. They have *the* opportunity to adopt a long due compensation right that protects **fundamental rights of EU citizens**, while **levelling the playing field for industry** ([Article 79a](#), see [letter from youth, consumer, health, legal, environmental groups and examples](#)). To ensure that such a compensation right is effective, fair for industry and authorities, and protects people's health, it must be more than an empty shell. It must include **minimum guarantees**:

1. Collective actions: Support Art. 79a(2) of [European Commission](#) and [European Parliament](#)

- a. The wording enables Member States to provide a collective action mechanism for individuals suffering from cancer, heart diseases or any other severe sickness. This reflects the vulnerable situation ill people may be in and allows NGOs to represent them.
- b. **The wording provides for utmost flexibility for Member States** in how they implement collective action in their legal system – in fact the only requirement would be that such a type of action exists at all. Member states could thus easily use any existing national collective action mechanisms or include safeguards as they see fit.
- c. **All member states know collective action already.** Member states were obliged to implement collective action under the [Representative Actions Directive](#) (RAD) by the end of 2022. 66 EU legal acts already fall within the remit of the RAD and benefit from collective action, including the [General Data Protection Regulation](#). Member states had set up collective action mechanisms even before the RAD, also in environmental matters (e.g. [France](#)). They have not resulted in extensive litigation.
- d. **There is no risk of US-style class action waves.** Every individual claimant still has to prove all elements of their case to obtain any compensation. In addition, it is only possible to seek damages that actually occurred and only up to the actual detriment caused by actual illegal behaviour.

2. Authorities' accountability: Support Art. 79a(1) of [European Parliament](#)

- a. **IED compensation claims against authorities are explicitly limited to situations “where appropriate”.** The authority's breach must lead to the specific individual damage. It will not affect permit writers when making use of a discretion, but may e.g. cover cases where operations have no permits at all.
- b. **State liability is a general principle developed by the [European Court of Justice as inherent in the system of the treaties](#).** State liability is a common principle in EU and national law.
- c. **Compensation rights from authorities are also established by the [European Court of Human Rights](#).** The Court states that compensation for damage flowing from the breach is part of the range of possible remedies, and this also explicitly applies to [“failure by the authorities to protect persons from the acts of others”](#).
- d. **Similar compensation rights exist already in several Member States.** A recent example [in France](#) demonstrates that they **lead to modest awards of compensation for health damage** – if any: Families of two children received for the first time in France compensation payments of €2,000 and €3,000 for health damages caused to their children by breaching air quality standards.

3. Disclosure tool for courts: Support Art. 79a(4a) of European Parliament

- a. **The court can ask the operator to provide specific information, if it is exclusively held by the operator and there is no other way to obtain it.** This can accelerate lengthy court proceedings. It is vital to address the information asymmetry between industrial operators and victims of illegal pollution. In any case, disclosure is up to the court's discretion and subject to the applicable EU and national rules on confidentiality and proportionality.
- b. **Disclosure tools for courts exist already**, e.g., in the Antitrust Damage Directive or the RAD (and proposed for the AI Liability Directive, Product Liability Directive). These provisions also add that there must be consequences if the operator ignores the court order. The IED provision should also clarify what happens if the operator ignores the court order.

4. Presumption: Support Art. 79a(4) of European Commission

- a. Today, even in cases of illegal pollution, sick people are essentially abandoned before the courts, because it is nearly impossible to meet the evidence requirements (Recital 33). A simple, rebuttable presumption as a *compromise* is not a reversal of burden of proof – but seeks to more fairly balance the responsibilities between unlawfully acting industries and victims. The victim must still prove as much as possible and operators always have the right to rebut the presumption.
- b. A presumption is more limited than the burden of proof rules that already exist in other areas of **EU law**, e.g. in laws protecting competition, equal treatment, or data. All of these have been implemented at national level **without leading to excessive litigation** (see Bulgaria, France, Germany, Italy, Netherlands, Poland). People's health deserves the same protection.
- c. Presumptions are also a common tool in **national law**. For example, the German Environmental Liability Act provides a **presumption** of the causal link “[i]f an installation is likely to cause the damage that occurred on the basis of the given facts of the individual case”.
- d. A presumption implements case law from the **European Court of Human Rights** that provides for presumptions to take into account the nature of the substantive right at stake and any evidentiary difficulties.

Reject any limitation of scientific data as evidence before courts

- a. **Any limitation of scientific data to be used before courts contradicts the intention to improve the victim's situation before courts.** Such limitation is for example created when limiting scientific data to “clear and consistent” one or adding soft wording on its use as evidence which provides for unclarity.
- b. Scientific data is in any case to be used as evidence before courts – in all Member States, as all Member States are based on the rule of law.
- c. Also, the European case law is asking explicitly to consider all “**relevant scientific data**” in the IED context (CJEU C-375/21, §§ 68, 68).

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