

DEBUNKING MISLEADING CLAIMS ABOUT THE IED COMPENSATION RIGHT

The IED compensation right grants **victims suffering from health damage due to illegal pollution the right to ask for compensation**. Today, even in cases of illegal pollution, people suffering from health issues are essentially abandoned because there are no effective, harmonised rules to ask for remedy before the courts (cf. [Recital 33 IED proposal](#)).

The ENVI committee compromise ([AM 218-222](#)) is **weaker than the Commission proposal**, but at least, it seeks to find a **fairer balance** of responsibilities between unlawfully acting industries and their victims – taking into account that the essential information is often with the industry. If sufficient evidence has been provided by the victim, there is a presumption of the causal link between the IED violation – which can always be rebutted by the operator. This is NOT a reversal of burden of proof, but merely a rebuttable presumption. **Anything less would be meaningless.**

The compensation right has been surrounded by misleading claims – but we have the facts:

1. Claim: “Anyone can get compensation without proving anything” – WRONG!

There is NO reversal of burden of proof. There are NO automatic presumptions. Victims have to bring evidence for all elements: 1. their health damage, 2. the operator’s IED violation and 3. facts linking the damage and violation – which are always rebuttable by the operator. Even the use of scientific data got a stricter definition by ENVI. Courts will carefully consider the evidence and only award compensation where legally justified.

2. Claim: “This compensation right means excessive litigation” – WRONG!

Compensation rights and presumptions are **nothing new in EU law**, e.g. in competition law ([Art. 5, 6, 13, 17 Antitrust Damages Dir.](#)), equal treatment legislation (e.g. [Art. 10 Equality Framework Dir.](#)) or data protection ([Art. 82 General Data Protection Reg.](#)). Practice has shown that **none of these provisions have led to excessive litigation**. This is even more true for the IED right as adopted by ENVI, as it is more limited and includes extensive safeguards.

3. Claim: “Industry will have to pay without having done anything wrong” – WRONG!

Victims can only get compensation if the installation is in **breach of IED rules**, e.g. if it illegally emits more pollutants into air or chemicals into water than their permit allows. Installations operating legally have nothing to worry about. This incentivises compliance with EU law in the first place to ensure a level playing field. In any case, a “claim” of a breach will never be sufficient – the breach must be proven.

4. Claim: “This is already covered by the Environmental Liability Directive” – WRONG!

The Environmental Liability Directive covers only environmental damages and explicitly excludes a compensation right for individuals. The IED is the right place for a compensation right for victims of illegal industrial pollution suffering from health damages.