

**PROPOSAL FOR A DIRECTIVE  
ON  
ENVIRONMENTAL LIABILITY  
WITH REGARD TO THE PREVENTION AND RESTORATION  
OF ENVIRONMENTAL DAMAGE**

**UNICE POSITION**

***The permitted emission  
or event exception***

***Article 9 (c)***

- UNICE is concerned about persisting misunderstanding on the subject of permits. Permits set out strict requirements, drawn up by the authorities on the basis of environmental legislation, which take into account specific health, safety and environmental concerns. Permits and environmental legislation play an essential role in the improvement of businesses' environmental performance and the protection of the environment. In heavily regulated areas, such as the environment, regulations and permits define the boundaries between acts that are permitted and lawful and those that are not.
- At the moment, a certain environmental standard is set by the authorities in a regulation or a permit; the interests of the environment are weighed against other (economic) interests. It would be unfair to allow certain activities on the one hand and to hold companies liable for the known and accepted consequences of these activities on the other hand. Companies should be able to rely on the standards set by the authorities and not be confronted with claims whilst respecting the standards set by the government. Since minimising the damage to the environment is the exact subject of the permits and regulations, it seems evident that such permits and regulations can be used as a defence against claims for environmental damage. This also explains why a permit cannot always be used as a defence against a third party claim, since this claim may also relate to other interests than those taken into consideration at the time the permit was granted. Of course the claimant then has to base its claim on another ground, for instance negligence of the company concerned.
- The permitted emission or event exception in the Commission's proposal is a limited defence which covers only those emissions and events explicitly permitted by the authorities. It would be unwise to exclude this defence because the mere existence of this defence will encourage companies to comply with the regulations to ensure that they cannot be held liable under the proposed Directive.
- The permitted emission or event exception in the Commission's proposal does not deprive third parties who have suffered damage to their property or health from the right to receive compensation; the proposed Directive does not affect this right, which is assured in national law. The proposed exception also does not shield companies from liability in case of reckless behaviour or negligence and it does neither cover accidents considering that they are not explicitly permitted in permits and regulations.

- The permit defence is thus fundamental for a regime that is both credible and workable. It is also crucial to ensure that the regime can be insured. It is also reasonable since it does not protect companies against reckless behaviour and accidents and leaves third parties' rights for compensation unaffected. And importantly, it does not undermine the vital role permits and regulations play in protecting the environment.
  - In summary: the draft Directive sets out a Public Law regime. It gives national authorities the right – and duty - to take preventive and restorative action in the event of damage to the environment. It would be unreasonable if national authorities could take these actions in cases where public authorities have specifically authorised the event or activity which caused the damage. This would be tantamount to 'taking away with the left hand what was given by the right hand'.
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