

Common Statement on the proposal for a Directive on Environmental Liability



This position paper on the environmental liability proposal is a joint response of Eurochambres, UNICE and UEAPME, the representatives of the European businesses concerned by the future Directive, FERMA, the Federation of European Risk Management Associations, and BIBAR and the Comité Européen des Assurances which play a vital role in the debate on insurability.



We acknowledge the long-term work done by the European Commission to create a legal framework for the prevention and restoration of environmental damages and make sure that the one who pollutes is the person to be held liable.

The concepts introduced in the proposal are unknown to the European legal framework and create major legal and economic uncertainty and are unlikely to be insurable without appropriate adjustments. Therefore, considering the current situation, such a Directive can only live up to its expectations if the following elements are taken into account:



In order for environmental liability to become a reality and for the principle of “polluter pays” to be implemented, **it is important that the directive contains the prerequisites that will allow insurers to set up schemes to cover environmental damages.** Recent findings do not allow us to conclude that this will be the case.



The insurance market can only flourish in a well-defined scheme. **Environmental damage and damage to biodiversity in particular are new concepts, as is compensatory restoration and coverage of interim losses** (interim: time lag between discovery and recovery of damage). The insurance markets have no experience in this field and quantification of risks is currently impossible, which might result in the absence of insurances for most businesses.



In order to encourage insurances in this new area, a number of adjustments need to be introduced. Firstly, the scope covered must be well established and limited. Therefore, **restricting the scope of the Directive to the sites designated to form part of the future Natura 2000 network is appropriate.** This network represents Europe’s natural heritage. It will cover a significant proportion of the EU territory and is expected to increase with enlargement. Also, the sort of damage the future Directive should address should limit itself to environmental damage. The Directive should also be sharply restricted to recovery of damage towards the baseline condition immediately before the damage (the concept of which must be clearly defined).





Secondly, **the current permit and state of the art exemption must be maintained.** Permits are not a 'licence to pollute', but a preventive instrument – they set out strict guidelines, drawn up by the authorities, taking into account specific health, safety and environmental concerns. Permits do not cover accidents.

Environmentally responsible operators complying with their permits must be able to rely on the permit exemption or the current permit system risks being undermined. The permit exemption is also crucial to ensure that liability under the regime can be insured and so is the state of the art exemption since the very assessment of biodiversity damage and its repair will only be possible by reference to and in the light of the state of the art



Thirdly, there is a need to consider **limited liability.** It will help maintain the profitability of firms, ensure their future functioning, promote innovation and R&D and secure legal certainty. However according to the CEA, it is wrong to assume that setting limits on liability, together with a system of compulsory insurance, encourages the insurability of the system and enables a definitive solution to be found.



The Commission's proposals on **strict liability should be maintained as far as really hazardous activities are concerned and not be extended to non-hazardous activities.** Otherwise, the burden for companies which hardly contribute to environmental damage will increase unacceptably as businesses might have to establish cost-effective financial securities without any proportionate risk.



Finally, the sort of pollution the Directive addresses **should not include pollution of a widespread character** as the three required elements namely, a concrete and quantifiable damage, one or more polluters and the need for a causal link between the damage and the identified polluter(s), cannot be established in cases of damages resulting from this kind of pollution.



The possibility for businesses, that can prove the extent to which a damage results from their activities, to only have to bear the costs related to that part of the damage must be kept, as it is a legal principle and will reward the more environmentally oriented companies.

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