



Environmental Liability - 2nd Reading Amendments tabled in the Committee on Legal Affairs and the Internal Market

CEFIC, EUROPIA, OGP and UNICE represent business comprising industry at large and in particular chemical as well as oil and gas companies.

Acknowledging the difficulties of dealing with damage to the environment in all Member States, and bearing in mind the studies and consideration in general by academics, NGOs and European and national authorities to progress this matter, we recognise that the Council Common Position makes a major contribution in this regard.

We are of the view, however, that, in order to create legal certainty, ensure a level-playing field and encourage the development of appropriate financial security, some principle provisions need to be amended and EU harmonisation increased. A number of amendments have been tabled to this end.

Furthermore, we regret that a number of amendments adopted by the European Parliament in the 1st Reading and significantly contributing to the achievement of the mentioned objectives have not been taken over by the Council in its Common Position. We are pleased to note that most have been re-tabled.

We urge the European Parliament to adopt these amendments in the 2nd Reading and to reject any amendments that undermine the objectives to be achieved.

We draw your attention to the following principal provisions in the Common Position and related amendments tabled in the Committee on Legal Affairs and the Internal Market (NOTE: numbering relates to translations, not to panaché version):

1. Clear defences based on permit compliance and state-of-the-art knowledge

Permit compliance and state-of-the-art knowledge should be sufficiently recognised to prevent the current permit system and the development of appropriate financial security being undermined. Recital 20, Articles 4 + 8: **Please support** Amendments 27+49 or 45/46 (identical) or 16+52.

2. Appropriate financial security

The question of financial security is complex and the choice and method of implementation should be left to the Member States. There are currently no financial security instruments readily available for the type of damage covered by the future Directive, and it is inappropriate to make financial security mandatory as from a specified date. Recital 27, Article 14: **Please reject** Amts 5,17-19, 59, 60, 62-64.

3. Access to justice

Any possibility of the public taking direct action against operators bears a high risk of undermining the response of the competent authorities. Environmentally responsible operators may also become the subject of legal interventions which aim to interrupt lawful activities. Article 12: **Please reject** Amts 55/56 (identical), as they exceed the requirements of the Aarhus Convention and conflict with the Member States' different legal systems.

In addition, we urge the Parliament to insist in the 2nd Reading on the following amendments:

- Clear operator responsibility to make clear that the operator should act first, with the competent authority only intervening if the operator does not act satisfactorily. Article 5 and 6: **Please support** Amts 34 or 35 and 38 or 39.
- An obligation for Member States to ensure that operators do not have to pay twice in respect of the same damage because of an overlap with civil liability. Article 16: **Please support** Amt 65.
- Designation of Annex II (Remediation) as guidelines and deletion of the notion of "interim losses" and monetary valuation. Article 2 + Annex II: **Please support** Amts 21 and 75-87.
- Clear requirement that liability must be proportional and proven. Article 9: **Please support** Amt 4.

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