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*Committee on the Environment, Public Health and Consumer Policy*

**2002/0021(COD)**

24 January 2003

## **OPINION**

of the Committee on the Environment, Public Health and Consumer Policy

for the Committee on Legal Affairs and the Internal Market

on the proposal for a Council directive on environmental liability with regard to the prevention and remedying of environmental damage  
(COM(2002) 17 – C5-0088/2002 – 2002/0021(COD))

Draftsman: Mihail Papayannakis



## PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Mihail Papayannakis draftsman at its meeting of 27 March 2002.

It considered the draft opinion at its meetings of 9 July 2002, 8 October 2002, 5 November 2002, 10 December 2002 and 22 January 2003.

At the last meeting it adopted the following amendments by 31 votes to 25, with 1 abstention.

The following were present for the vote: Caroline F. Jackson, chairman; Alexander de Roo, Anneli Hulthén and Mauro Nobilia, vice-chairmen; Mihail Papayannakis, draftsman; María del Pilar Ayuso González, Emmanouil Bakopoulos (for Pernille Frahm), Hans Blokland, David Robert Bowe, John Bowis, Hiltrud Breyer, Martin Callanan, Dorette Corbey, Chris Davies, Avril Doyle, Anne Ferreira, Marialiese Flemming, Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Laura González Álvarez, Robert Goodwill, Françoise Grossetête, Jutta D. Haug (for Torben Lund), Marie Anne Isler Béguin, Hedwig Keppelhoff-Wiechert (for Raffaele Costa), Christa Klaß, Eija-Riitta Anneli Korhola, Hans Kronberger, Bernd Lange, Paul A.A.J.G. Lannoye (for Patricia McKenna), Peter Liese, Giorgio Lisi (for Cristina Gutiérrez Cortines), Jules Maaten, Minerva Melpomeni Malliori, Jorge Moreira da Silva, Emilia Franziska Müller, Riitta Myller, Ria G.H.C. Oomen-Ruijten, Marit Paulsen, Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Jean Saint-Josse (for Jean-Louis Bernié), Giacomo Santini (for Giuseppe Nisticò), Karin Scheele, Horst Schnellhardt, Inger Schörling, Jonas Sjöstedt, María Sornosa Martínez, Catherine Stihler, Nicole Thomas-Mauro, Astrid Thors, Antonios Trakatellis, Elena Valenciano Martínez-Orozco, Kathleen Van Brempt, Peder Wachtmeister and Phillip Whitehead.

## SHORT JUSTIFICATION

### Introduction

On 23 January 2002, the European Commission published a rather confusing proposal for a directive on environmental liability with regard to the prevention and remedying of environmental damage. The development of such an EU law has been a long saga dating back to the early 1980's where several half-hearted attempts had been made to apply liability and insurance provisions on the transfrontier shipment of hazardous waste directive (84/631/EEC). The drafting of the law, which has already been 10 years in the making, includes:

- the publication in May 1993 of the Green Paper on Remedying Environmental Damage (COM(93)47 final);
- the adoption, in June 1993, by the Council of Europe of the "Lugano Convention" on civil liability for damage caused by dangerous activities, signed by Member States but still not been ratified;
- rapid advances in national and regional law on environmental liability within the EU Member States;
- the adoption by the EP, in April 1994, of a resolution calling on the Commission to submit "a proposal for a directive on civil liability in respect of environmental damage";
- the adoption of a White Paper, in February 2000, giving emphasis on a civil liability approach (covering traditional damage);
- the adoption by the Environment Committee of the EP of an opinion on the White Paper on the Environmental Liability, and
- the current proposal, which is based on a public law approach.

### Inadequacy of some definitions:

**Biodiversity** as defined by the Commission is restricted to habitats and species covered by the Habitats and Birds Directives. Under this definition, it is estimated that the Directive will apply to only 13% of the EU's territory and will be irrelevant to the remaining 87%. In addition to the abovementioned Directives, the EU has also ratified a number of international treaties and conventions on the protection of specific species or areas, including the Bonn and Bern Conventions. The liability regime should thus, as an absolute minimum, apply to damage caused to all species and habitats protected under regional, national, international and EU law, covering both existing law, any subsequent changes to the law, as well as relevant future legislation.

The definition of "**land contamination**" or "**soil and subsoil contamination**", should also include **radiation** to maximize public protection.

**Environmental damage:** according to the draft directive, liability to restore environmental damage is only triggered above a certain degree of "**seriousness**". The Commission proposal introduces the threshold of "**serious adverse effects**". This raises the question of who is to determine the seriousness of the damage in each case and the yardstick to be used for such determination. The Commission has not developed commonly applicable standards for determining significance to ecosystem, habitat or species population impacts or methods of testing significance.

The common standards ought to include considerations of:

- the extent and magnitude of the impact,
- the duration of the impact,
- whether impacts are reversible or irreversible, and
- the sensitivity and rarity of the resources impacted

## **GMOs**

It is essential that the definition of “**environmental damage**” also includes GMOs. Exemptions are foreseen in the draft Directive that would let GMO producers and operators off the hook for any damage to the environment. According to the draft Directive, liability is precluded for any events or activities which have been authorised or which were not considered harmful based on scientific knowledge at the time. Liability thereby will be illusory, because any harmful effects caused by a GMO that has been authorised for market release would never be subject to environmental liability.

**Air quality damage** should also be included in the definition of environmental damage in cases it has harmful effects on human health and the environment.

## **Interim losses**

Another area likely to be difficult is the notion of compensation for **interim losses** of natural resources and their services. The identification and quantification of these interim losses, which are inextricably linked to the primary restoration option chosen, are fundamental to the selection of compensatory measures.

## **Scope**

The proposal establishes strict liability for damage to land, water and biodiversity from activities specified in Annex I and fault-based liability for damage to biodiversity from other occupational activities. The list of regulated activities in Annex I omits many potential sources of serious environmental damage and should, therefore, be extended.

Oil pollution and nuclear damage are excluded from the EU Directive on environmental liability with the argument that this type of damage is already covered by other international conventions. This is not true. With particular regard to nuclear damage, the Paris Convention covers only traditional damage and not environmental damage; therefore, these exceptions reduce the article 3.4 of the Directive to an absurdity. Nuclear damage must be included in the Directive so that it is subject to compensation like any other damage to the environment. No other energy form receives the preferential treatment as nuclear power does.

## **Exceptions**

The scope and effectiveness of a strict liability regime very much depend on the nature and extent of the defences allowed. The “**compliance with permit**” and the “**state of the art**” exceptions currently included in the text of the proposed Directive must be completely removed, to ensure that the costs of remediation are borne by those causing environmental damage. These exceptions should not be admitted as defences, thus restricting the scope of the liability regime. This would undermine the effective implementation of the “polluter pays” principle. The Commission’s legal study (<http://europa.eu.int/comm/environment/liability/legalstudy.htm>) clearly states that none of the 10 EU-states and the 5 OECD countries that were surveyed allows for either the permit defence or the state of the art defence in their environmental liability regimes.

## **Prevention and restoration**

The proposal establishes a public law regime, with the competent authority responsible for determining and securing the appropriate prevention or remediation measures. This may risk putting an unfair burden on the taxpayer. In principle, initial liability for taking the preventive and remediation measures should lie with the operator, thus avoiding government authorities having to bear a bigger burden than that borne by the actual polluter. State responsibilities will remain only in cases where

the operator does not fulfil its obligations. This system provides for a “safety net” to cover any possible loopholes or exemptions of responsibility created by the liability regime established to ensure the prevention and remediation of damage. Whilst placing liability firmly on the operator causing the pollution, it would also require the competent authority to act when the operator cannot be identified or is exempted to act under the Directive. This system has not only proved its worth in German legislation, but it would also strengthen the “polluter pays” principle.

### **Access to justice**

The proposal foresees only indirect access to justice, via public authority. This means that, if the competent authorities, who are both responsible for delivering permits and for enforcing the liability rules, do not take action against the polluters, European citizens would only be able to challenge the authorities in court, not the polluters themselves. This position is obviously profoundly unsatisfactory and does not take into account the provisions set out in the Aarhus Convention to which the EC is a signatory. Neither is it in line with the Commission’s approach regarding future EU governance and the better involvement of citizens in the decision-making process. “The public concerned” as defined in Article 2(5) of the Aarhus Convention must, within the framework of its national legislation, have access to a review procedure before a court of law or another independent and impartial body established by law (Article 9 of the Aarhus Convention).

### **Burden of proof**

The burden of proof as regards causality between action and damage lies with the competent authority according to the proposal. A clear commitment to the alleviation of the burden of proof is in line with the working paper of April 1998 where the Commission had already argued as follows: “In a first stage the plaintiff has to prove the damage and its origin and present the elements that make causality between the two plausible; if he succeeds in this, there should be a rebuttable presumption that the activity has caused the damage”. The defendant then has to prove “with a prevailing probability” that he did not cause the damage. In the strict liability systems of some of the Member States, the burden of proof is much lower and certain rules for a change in the burden of proof have been introduced. For example, in Germany a reduction of the burden of proof of causation developed through case law, has been included in the environmental liability legislation. In France the burden of proof is reversed for strict liability; the operator is *de facto* the person at fault and is obliged to prove external cause in order to be exonerated. In Greece, in cases of strict liability the burden of proof is effectively reversed.

### **Joint and several liability**

The rapporteur welcomes the fact that when a damage is caused by the actions or omissions of several operators, they are jointly and severally liable. The dominant principle under civil law in the great majority of countries, is joint and several liability qualified by encouragement of decision on equitable grounds.

### **Occupational activities**

The list of occupational activities to which the Directive applies is too narrow and a series of environment-unfriendly activities are excluded. The list should include all activities subject to any EU environmental legislation, as well as a catch-all position to cover any future legislation. It is therefore desirable for the Annex I to be updated every 5 years.

### **Financial security**

Financial security, in the form of insurance and/or dedicated funds, must be made mandatory under the Directive to ensure that the financial means to carry out environmental remediation are available. This requirement should include the creation of a dedicated fund to ensure that the remediation cost of "orphan sites" is not borne by public authorities. Within 5 years from the date of entry into force of the Directive, Member States must ensure that operators shall use appropriate insurance or other forms of financial security (probably with an upper cap) to cover their responsibilities. In any case, it would make sense to have different levels of insurance cover reflecting the risks of the relevant activity of the operator. Such a system would provide an added incentive for operators to reduce the potential risk of environment damage, thereby applying the precautionary and prevention principles.

## Conclusions

The principal conclusion is that the whole set of these provisions and their arrangement may lead to serious confusion. This Directive emerges as something of a hybrid, retaining civil-law based elements within a public law approach. Public law regimes generally specify fewer defences; some include none at all; they do not generally limit strict liability to listed activities but they usually hold responsible parties strictly liable regardless of the nature of their activity; they have wider definitions of the liable party and might cover historic damage.

The regime that the Commission has presented risks being seen as ineffective in its goal of protecting the public. A clear framework for civil liability is an important element in any legal system to ensure the implementation of the "polluter pays" principle. Consequently, any EC legislation on environmental liability needs to be clear, certain, consistent and coherent in its effects. Otherwise, it may cause the basically healthy "polluter pays" principle to do almost as much harm as good.

## AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1

#### Recital 1

(1) There are currently *many contaminated* sites in the Community posing significant health risks and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future. Preventing and remedying, in so far as is possible, environmental damage

(1) There are currently *some 300.000* sites in the Community *which have already been identified as definitely or potentially contaminated* posing significant health risks and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future.

<sup>1</sup> OJ C 151, 25.6.2002, p. 132.

contributes to implementing the objectives and principles of the Community's environment policy as set out in Article 174 of the Treaty.

Preventing and remedying, in so far as is possible, environmental damage contributes to implementing the objectives and principles of the Community's environment policy as set out in Article 174 of the Treaty.

***The importance of local conditions must be stressed as far as remedying the damage is concerned.***

#### *Justification*

*These are estimates published by the EEA (Management of Contaminated sites in Western Europe, June 2000) to show the significance of the problem.*

*The importance of 'local conditions' in evaluating the damage caused must not be forgotten; pollution in a medium mountain site, for example, is not treated in the same way as pollution on a plain.*

#### Amendment 2

##### Recital 2

(2) The prevention and remedying of environmental damage should be implemented through the furtherance of the principle according to which the polluter should pay, as indicated in Article 174(2) of the Treaty. One of the fundamental principles of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage will be held financially liable in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.

(2) The prevention and remedying of environmental damage should be implemented through the furtherance of the principle according to which the polluter should pay, as indicated in Article 174(2) of the Treaty ***and according to the European Union's strategy on sustainable development as set out in Article 6 of the Treaty.*** One of the fundamental principles of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage will be held financially liable in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.



### *Justification*

*The environment has been sidelined for too long by economic needs and social aspirations of Europe. But economic and social development is only sustainable in the long term if the environment and natural resources are fully protected. The sustainable development strategy must have a real impact on the EU's policies and procedures should be taken into consideration by all European policies in order to be in full consistency with the declarations on the protection of the environment and natural resources.*

### Amendment 3

#### Recital 3

(3) Since the objective of the proposed action, namely to establish a common framework for the prevention and remedying of environmental damage at a low cost to society, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level by reason of the scale of the proposed action and the implications in respect of other Community legislation, namely Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [58], Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [59], and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [60], the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(3) Since the objective of the proposed action, namely to establish a common framework for the prevention and remedying of environmental damage at a low cost to society, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level by reason of the scale of the proposed action and the implications in respect of other **regional, national, international and** Community legislation, namely Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [58], Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [59], and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [60], the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

*Justification*

*By extending the scope of the proposed action to national and international legislation wider protection is achieved.*

Amendment 4

Recital 5

(5) Biodiversity should also be defined *by reference to areas of protection or conservation that have been designated in pursuance of national legislation* on nature conservation.

Account should nevertheless be taken of specific situations where Community directives or equivalent national provisions allow for certain derogations from the level of protection afforded to the environment.

(5) Biodiversity should also be defined *in line with the Convention on Biological Diversity and by reference to species, habitats and sites protected under international, regional, Community and Member-State law* on nature conservation, *as well as relevant future legislation.*

Account should nevertheless be taken of specific situations where Community directives or equivalent national provisions allow for certain derogations from the level of protection afforded to the environment. ***Biodiversity also means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part ; this includes diversity within species, between species and of ecosystems;***

*Justification*

*Biodiversity should not only be defined by reference to areas of protection or conservation according to national or EC legislation but also according to the various international and regional conventions and programmes which represent a strong basis for the protection of natural resources in Europe and are particularly relevant to the conservation of birds and their habitats. In order to achieve a more complete protection of the environment the biodiversity definition should be in line with the Convention on Biological Diversity.*

Amendment 5

Recital 6

(6) This Directive should apply, as far as environmental damage is concerned, to occupational activities which present a risk for human health and the environment. Those activities should be ***identified, in principle, by reference to the relevant Community legislation which provides for regulatory requirements in relation to certain activities or practices considered as posing a potential or actual risk for man or the environment.***

This Directive should apply, as far as environmental damage is concerned, to ***all*** occupational activities ***or practices*** which present a risk for human health and the environment. Those activities ***or practices*** should be ***included irrespectively of whether or not they are governed by Community legislation.***

*Justification*

*The deciding factor in determining liability for environmental damage should be the seriousness of the damage caused to the environment rather than the arbitrary nature of the activity causing the damage. Any list of regulated activities will be inefficient, as it can never cover all activities that may pose a danger to the environment.*

Amendment 6

Recital 6 a (new)

***(6a ) Environmental damage within the meaning of this Directive refers to water, soil and biodiversity damage resulting from accidental or deliberate release of substances, materials or radiation; airborne elements are also included within the meaning of this Directive in so as far as they cause damage to water, soil or biodiversity, or present potential or actual serious harm to human health.***

*Justification*

*The proposal for a directive applies directly to water, soil and biodiversity damage. Air pollution is covered only indirectly when it causes such damage or presents serious risks for human health. This situation does not emerge from the body of the proposal, and hence it is of fundamental importance that the preamble should explain that activities which cause air pollution are definitely included in the sphere of environmental liability although damage to*

*air quality is not included.*

#### Amendment 7

##### Recital 7

(7) This Directive should also apply, in relation to biodiversity damage, to any occupational activities other than those already directly or indirectly identified **by reference to Community legislation** as posing an actual or potential risk for man or the environment.

(7) This Directive should also apply, in relation to biodiversity damage, to any occupational activities other than those already directly or indirectly identified as posing an actual or potential risk for man or the environment.

#### *Justification*

*Biodiversity should not only be defined by reference to areas of protection or conservation according to national or EC legislation but also according to the various international and regional conventions and programmes which represent a strong basis for the protection of natural resources in Europe and are particularly relevant to the conservation of birds and their habitats. In order to achieve a more complete protection of the environment the biodiversity definition should be in line with the Convention on Biological Diversity.*

#### Amendment 8

##### Recital 8

**(8) Express account should be taken of the Euratom Treaty and relevant international conventions and of Community legislation regulating more comprehensively and more stringently the operation of any of the activities falling under the scope of this Directive.** This Directive, which does not provide for additional rules of conflict of laws when it specifies the powers of the competent authorities, is without prejudice to the rules on international jurisdiction of courts as provided, inter alia, in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. **This Directive should not apply to activities carried out in the interest of national defence.**

(8) This Directive, which does not provide for additional rules of conflict of laws when it specifies the powers of the competent authorities, is without prejudice to the rules on international jurisdiction of courts as provided, inter alia, in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

### *Justification*

*Nuclear risks and the resultant environmental damage are symbols of environmentally hazardous activities. They are no less drastic than the cases cited in the introductory section of the explanatory memorandum to the Commission's proposal and it is not evident on what factual grounds they warrant special treatment. The Commission's proposal would have the absurd consequence of totally excluding environmental damage caused in connection with production of energy from fissile material. None of the international conventions listed in the proposal provide for any form of liability for environmental damage. In addition, not all Member States have ratified these conventions.*

*There is no justification for the resultant boost to the nuclear energy industry over other forms of energy production (e.g. by river or storage power plants).*

*The European Union is not barred from introducing rules on liability for such environmental damage within the Community which are more stringent than those provided in those conventions.*

*It is therefore sensible to include nuclear risks in Annex I and to introduce liability under this directive.*

### Amendment 9

#### Recital 9

(9) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one (or more) identifiable actors (polluters), the damage needs to be concrete and quantifiable, and a causal link needs to be established between the damage and the identified polluter(s). Liability is therefore **not** a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is **impossible** to link the negative environmental effects with the activities of certain individual actors.

(9) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one (or more) identifiable actors (polluters), the damage needs to be concrete and quantifiable, and a causal link needs to be established between the damage and the identified polluter(s). Liability is therefore a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is **possible** to link the negative environmental effects with the activities of certain individual actors.

### *Justification*

*According to our legal systems in Europe this statement is obvious, so there is no point in stressing it.*

Amendment 10  
Recital 10

(10) Since the prevention and remedying of environmental damage is a task directly contributing to the pursuit of the Community's environment policy, public authorities should be entrusted with special responsibilities to ensure the proper implementation and enforcement of the scheme provided for by this Directive.

(10) Since the prevention and remedying of environmental damage is a task directly contributing to the pursuit of the Community's environment policy, public authorities should be entrusted with special responsibilities to ensure the proper implementation and enforcement of the scheme provided for by this Directive. ***However, to ensure the implementation of the « polluter pays » principle and that the aims of the Directive are fully met, qualified entities should also have a right to take direct legal action in the case of a threat of imminent damage to the environment.***

*Justification*

*The rights the Directive gives to directly affected and to qualified entities are too weak and indirect to be able to ensure that the Directive's objectives are met. Merely being able to request the competent authority to take action or having the right to bring judicial review proceedings in relation to the competent authority's decision is not sufficient. The aims of the Directive will be more effectively achieved by allowing public interest groups and individuals to take action directly against polluters in the case of imminent damage to the environment.*

Amendment 11  
Recital 12

(12) Restoration of the environment should take place in an effective manner ensuring that the relevant restoration objectives are achieved. Appropriate guidelines should be defined to that end, the proper application of which should be supervised by the competent authority.

(12) Restoration of the environment should take place in an effective manner ensuring that the relevant restoration objectives are achieved ***and the damaged natural resources and/or impaired services return to baseline condition. When deciding on which restoration measures to be taken,***

***the potential future use of the damaged site should be taken into consideration.***

Appropriate guidelines should be defined to that end, the proper application of which should be supervised by the competent authority.

#### *Justification*

*To ensure that “the relevant restoration objectives are achieved” is vague and subjective. To be in line with the word and the spirit of this proposal the damaged resources or impaired services have to return to baseline condition. The addition is necessary to correspond with the definition of Article 2, paragraph 1, point (16). The potential future use of the damaged site or land should also be taken into consideration when deciding on the restoration measures. This is in line with environmental liability laws in several Member States (see comparative legal study, <http://europa.eu.int/comm/environment/liability/legalstudy.htm>)*

#### Amendment 12

##### Recital 16

***(16) Where biodiversity damage has been caused by an operator in the course of an occupational activity other than one of those identified by this Directive as posing an actual or potential risk for man or the environment, that operator should not be obliged to bear the cost of preventive or restorative measures taken in pursuance of this Directive where it is not established that the operator was at fault or negligent.***

***Deleted***

#### *Justification*

*The deciding factor in determining liability for environmental damage should be dependent on the actual damage caused to the environment rather than the arbitrary nature of the activity causing the damage.*

Amendment 13

Recital 17

(17) Appropriate account should be taken of situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator's control or *of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place*, or where persons act in their capacity as insolvency practitioners and are not otherwise at fault or negligent, *or where operators merely comply with the regulatory requirements imposed on their activity*. In that context, there may be situations in which it is justifiable that, although the operator should not bear the cost of preventive or restorative measures, Member States should nevertheless be required to take action.

(17) Appropriate account should be taken of situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator's control , or where persons act in their capacity as insolvency practitioners and are not otherwise at fault or negligent. In that context, there may be situations in which it is justifiable that, although the operator should not bear the cost of preventive or restorative measures, Member States should nevertheless be required to take action.

*Justification*

*It is obvious that the aim of the Directive to prevent and remedy environmental damage cannot be achieved if any of the above exemptions are included in any way.*

Amendment 14

Recital 20

(20) Competent authorities should be entitled to recover the cost of preventive or restorative measures from an operator for a reasonable period of time from the date on which those measures were *effected*.

(20) Competent authorities should be entitled to recover the cost of preventive or restorative measures from an operator for a reasonable period of time from the date on which those measures were *completed*.

*Justification*

*To be in line with the amendment on Article 12 of the proposal.*



Amendment 15  
Recital 22

*(22) Persons adversely affected or likely to be adversely affected by environmental damage* should be entitled to ask the competent authority to take action. *Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act.* Qualified entities should therefore be given a special status so that they can properly contribute to the effective implementation of this Directive.

*(22) "The public concerned" which means the public affected or likely to be affected by, or having an interest in, the environmental decision making, including non-governmental organisations promoting environmental protection* should be entitled to ask the competent authority to take action, *to participate in decision-making and have access to justice.* Qualified entities should therefore *also* be given a special status so that they can properly contribute to the effective implementation of this Directive.

*Justification*

*All individuals directly affected and all groups whose objective is to protect the environment must be given the right to take direct legal action in the case of imminent damage to the environment. The modification is also in line with the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.*

Amendment 16  
Recital 24

(24) The relevant persons and qualified entities should have access to procedures for the review of the competent authority's decisions, acts or failure to act.

(24) The relevant persons and qualified entities should have access to procedures for the review of the competent authority's decisions, acts or failure to act ***and a right to appeal.***

*Justification*

*Depending on the relevant Member States' legal systems, it is important that there should not*

*only be a right of “judicial review”, which could only mean a right to review whether a competent authority’s decision is reasonable one or not, but also a right to appeal, in which the substance and procedural correctness of the authority’s decision can be tested and an injunction to take immediate action can be issued.*

#### Amendment 17

##### Recital 26

(26) Member States should *encourage* the use by operators of any appropriate insurance or other forms of financial security in order to provide effective cover for financial obligations under this Directive.

(26) ***A system of mandatory financial security should form an integral part of the liability regime.*** Member States should ***take all necessary measures to ensure*** the use by operators of any appropriate insurance or other forms of financial security in order to provide effective cover for financial obligations under this Directive.

#### *Justification*

*If the directive is to achieve its aims of preventing and restoring environmental damage as well as implementing the "polluter pays principle", then it is absolutely crucial that some form of compulsory financial security be introduced.*

#### Amendment 18

##### Recital 29

(29) Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission ***to consider***, taking into account the impact on sustainable development, ***whether any review of the Directive is appropriate.***

(29) Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission, taking into account the impact on sustainable development ***and future risks to the environment, to proceed to a review of the Directive in (5) years.***

#### *Justification*

*Provision must be made in the Directive to ensure that the list of activities in Annex I is reviewed and up-dated at regular intervals, to take into account new occupational activities.*

Amendment 19  
Recital 29 a (new)

***(29a) Having regard to recital 16 of Directive 2001/18/EC and considering that the Commission has undertaken to bring forward, before the end of 2001, a legislative proposal on environmental liability covering, inter alia, damage from GMOs, calls on the Commission to submit such a proposal without delay.***

*Justification*

*In the conciliation committee considering Directive 2001/18, the Member States called for the insertion in the directive of provisions on liability in the event of damage to the environment being caused by plants produced using modern biotechnology. The Commission should therefore present as soon as possible a regulatory framework on liability for damage caused by genetically modified organisms with a view to completing the legislation necessary in the field of modern biotechnology.*

Amendment 20  
Article 2, paragraph 1, point 1

(1) "baseline condition" means the condition of the natural resources and services that would have existed had the damage not occurred, estimated on the basis of historical data, reference data, control data, or data on incremental changes (such as the number of dead animals), alone or in combination, as appropriate;

(1) "baseline condition" means the condition of the natural resources and services that would have existed had the damage not occurred, estimated, ***in the case of biodiversity, on the basis of conservation status and especially the achievement of favourable conservation status, and/or in relation to all natural resources and services, including biodiversity,*** on the basis of historical data, reference data, control data, ***environmental impact assessment data (if available), information from areas unaffected but comparable to the damaged site,*** or data on incremental changes (such as the number of dead animals), alone or in combination, as appropriate;

### *Justification*

*Biodiversity damage is defined by reference to the conservation status of habitats and species, especially its progress towards favourable conservation status. Therefore, the more relevant measure of the baseline condition in relation to biodiversity may well be its conservation status/progress towards favourable conservation status. This needs to be reflected in the definition of « baseline condition ». Otherwise, the way environmental damage is established and the way in which the actual damage and necessary restoration are identified will not match and the aims of the Directive will not be able to be achieved on a practical level.*

*In estimating the baseline condition the environmental impact assessment data and the information from areas unaffected but comparable to the damaged site could also serve as useful.*

### Amendment 21

#### Article 2, paragraph 1, point (2)

**(2) « biodiversity » means *natural habitats and species listed in Annex I to Directive 79/409/EEC, or in Annexes I, II and IV to Directive 92/43/EEC, or habitats and species, not covered by those Directives, for which areas of protection or conservation have been designated pursuant to the relevant national legislation on nature conservation;***

**(2) « biodiversity » means *all species and the protected sites they live in and habitats protected under international, Community, national and regional legislation, covering both existing law, any subsequent amendments to the laws, as well as relevant future legislation; ) in connection with genetically modified organisms, biodiversity means all habitats and species occurring within the area covered by this directive;***

### *Justification*

*The biodiversity definition should cover not only habitats and species protected under EU law but also under existing and future national and international legislation.*

*Action to remedy the damage to biodiversity caused by GMOs should be as broadly-based as possible, and should thus be extended to include damage other than that caused to protected areas.*

Amendment 22  
Article 2, paragraph 1, point 3

(3)"conservation status" means:

(a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, *as the case may be*, the **European** territory of *the* Member States to which the Treaty applies *or the territory of a Member State or the natural range of that habitat*;

(b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, *as the case may be*, the **European** territory of *the* Member States to which the Treaty applies *or the territory of a Member State or the natural range of that species*;

(3)"conservation status" means:

(a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory of *a* Member State to which the Treaty applies ;

***The conservation status of a natural habitat will be taken as « favourable » when :***

- *its natural range and areas it covers within that range are stable or increasing, and*
- *the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and*
- *the conservation status of its typical species is favourable as defined in (b) below;*

(b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory of *a* Member State to which the Treaty applies ;

***The conservation status of a species will be taken as « favourable » when :***

- *population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
- *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*
- *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.*

*Justification*

“Conservation status” and “favourable conservation status” are defined under the Habitats Directive. Using common agreed concepts, such as these, will ensure coherence across EU environmental legislation and will facilitate in the interpretation of this Directive. Using definitions which are virtually the same, but slightly different, will confuse the unity of interpretation of these terms.

Amendment 23

Article 2, paragraph 1, point (4)

(4) « costs » means costs which are justified by the need to ensure the proper and effective implementation of this Directive including administrative, legal, and enforcement costs, the costs of data collection and other general costs and monitoring and supervision costs;

(4) « costs » means costs which are justified by the need to ensure the proper and effective implementation of this Directive including ***the costs of assessing environmental damage or an imminent threat of such damage***, administrative, legal, and enforcement costs, the costs of data collection and other general costs and monitoring and supervision costs;

*Justification*

*Assessment costs are direct costs incurred in defining the anticipated environmental impact of an individual project or activity. Usually, this would include baseline studies, environmental impact analyses and the preparation of an Environmental Impact Study (EIS). Assessing the environmental damage is an expensive process and it should be included in the costs.*

Amendment 24

Article 2, paragraph 1, point 5

(5) “damage” means a measurable adverse change in a natural resource and/or measurable impairment of a natural resource service which may occur directly or indirectly ***and which is caused by any of the activities covered by this Directive;***

(5) “damage” means a measurable adverse change in a natural resource and/or measurable impairment of a natural resource service which may occur directly or indirectly;

### *Justification*

*The requirement that the damage be caused by activities covered by the Directive is too restrictive in view of the fact that technological changes and other developments may lead to new activities with a potential to damage the environment. The realities of the legislative process mean that legislatures, including the European Parliament and Council, as well as the Commission in the exercise of its power of initiative, should not be obliged to amend this directive before liability can be established.*

### Amendment 25

#### Article 2, paragraph 1, point (8)

(8) "natural resource" means biodiversity, water and soil, including subsoil;

(8) "natural resource" means biodiversity, water and soil, including subsoil ***and air***;

### *Justification*

*Emission of air pollutants are causing damage to natural resources of vital environmental and economic importance, such as forests, soils and waters, and may have harmful effects on human health. Consequently air should be considered as a natural resource.*

### Amendment 26

#### Article 2, paragraph 1, point (9)

(9) "operator" means any person who directs the operation of ***an activity covered by this Directive*** including the holder of a permit or authorisation for such an activity and/or the person registering or notifying such an activity;

(9) "operator" means any ***natural or legal, private or public*** person who directs ***or controls*** the operation of ***the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated***, including the holder of a permit or authorisation for such an activity, and/or the person registering or notifying such an activity; ***as well as site owners and occupiers of the land; in case a natural or legal, private or public person has an effective control of the operator, he will also be***

*deemed to direct or control the operation for the purposes of this Directive;*

*Justification*

*The definition of "any natural or legal person" excludes further possible liable parties. Other parties can also be involved in the described activities. These operators have to be included in the regime if the final goal of the directive, i.e. to hold all operators liable is to be achieved. A natural or legal, private or public person having an effective control of the operator is deemed to exercise full control on that operator and should therefore be held responsible for the damages caused by that operator. Several grounds are given for including site owners and occupiers of the land as liable parties: because they have a long-standing duty to keep their land in a safe condition or because they either have profited from the presence of the pollutants or will profit from the clean-up; and because exposing purchasers to this liability risk provides an incentive for them to investigate land thoroughly before they take possession of it, so helping to identify pollution problems.*

Amendment 27

Article 2, paragraph 1, point (11)

(11) « land contamination » or « soil and subsoil contamination » means the direct or indirect introduction, as a result of human activity, of substances, preparations, organisms or micro-organisms harmful to human health or natural resources into soil and subsoil;

(11) « land contamination » or « soil and subsoil contamination » means the direct or indirect introduction, as a result of human activity, of substances, **radiation**, preparations, organisms or micro-organisms harmful **or potentially harmful** to human health or natural resources into soil and subsoil;

*Justification*

*Radiation damage should be covered by the directive in respect of land contamination, especially in view of the fact that much radiation damage is exempted anyway under Article 3.4. In the interests of maximising public protection it is important that potential harm to human health or natural resources are also to be included.*

Amendment 28

Article 2, paragraph 1, point (14)



(14) "qualified entity" means any person who, according to criteria laid down in national law, has an interest in ensuring that environmental damage is remedied, including **bodies and organisations whose purpose, as indicated by the articles of incorporation thereof, is to protect the environment and which meet any requirements specified by national law;**

(14) « qualified entity » means any **legal or natural** person who, according to criteria laid down in national law, has an interest in ensuring that environmental damage is **prevented and** remedied, including **the “public concerned” which is the public affected or likely to be affected by, or having an interest in, the environmental decision making ; non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.**

#### *Justification*

*The proposal's definition is limited regarding access to justice and does not sufficiently take into account the provisions set out in the Aarhus Convention to which the E.U. is a signatory. It is also not in line with the Commissions' approach regarding future E.U. governance and the better involvement of citizen in the decision making process.*

#### Amendment 29

Article 2, paragraph 1, point (18), letter (a)

(a) biodiversity damage, which is any **damage** that has serious adverse effects on the conservation status of biodiversity;

(a) biodiversity damage, which is any **change in circumstances** that has **or is likely to have significant** adverse effects on **attaining and maintaining** the **favourable** conservation status of biodiversity;

#### *Justification*

*A clearer definition should be given to the term "biodiversity" The threshold proposed for damage to biodiversity and health is significant damage.*

Amendment 30

Article 2, paragraph 1, point (18), letter (b)

(b) water damage, which is any damage that **adversely affects** the ecological status, ecological potential and/or chemical status of the waters concerned to such an extent that this status will or is likely to deteriorate from one of the categories defined in Directive 2000/60/EC with the exception of adverse effects where Article 4(7) of Directive 2000/60/EC applies;

(b) water damage, which is any damage that **has or is likely to have adverse effects on** the ecological status, ecological potential, **quantitative** and/or chemical status of the waters concerned to such an extent that this status will or is likely to deteriorate from one of the categories defined in Directive 2000/60/EC with the exception of adverse effects where Article 4(7) of Directive 2000/60/EC applies;

*Justification*

*The framework directive on water identifies three factors on the basis of which to assess water quality: its environmental, chemical and quantitative status. The Commission proposal omits quantitative status, which would mean that the environmental liability regime would not apply in situations where the qualitative status of a given water resource had been affected.*

Amendment 31

Article 2, paragraph 1, point (18), point (c) and point (c a) (new)

(c) land damage, which is any damage that creates **serious** potential or actual harm to public health as a result of soil and subsoil contamination;

(c) land damage, which is any damage that creates **significant** potential or actual harm to public health **and natural resources** as a result of soil and subsoil contamination, **including GMO contamination ;**  
**(c a) air quality damage which is any damage that creates significant potential or actual harm to public health or causes damage to biodiversity, water and land;**

*Justification*

*It is not feasible for a liability regime to cover all environmental damage by all activities. Covering minimal or negligible effects on the environment would make a liability regime extremely difficult and expensive to apply. One way to avoid this is by applying the liability regime only for damage which surpasses a certain minimum threshold. The threshold*

*proposed for biodiversity and health is significant damage. More should be done to tighten up cover for GMO-based damage. Air quality damage is very crucial and it should, by all means, be included to the definition of environmental damage.*

Amendment 32  
Article 2(1)(19)

*(19) “value” means the maximum amount of goods, services, or money that an individual is willing to give up to obtain a specific good or service, or the minimum amount of goods, services, or money that an individual is willing to accept to forgo a specific good or service. The total value of a habitat or species includes the value derived by individuals from their direct use of the natural resource, for example, swimming, boating, or bird watching, as well as the value attributed by individuals to the habitats and species irrespective of direct uses. This excludes loss of financial income to individuals;*

*delete*

*Justification*

*“Value” as defined would only apply to the concept of compensatory restoration. It is very controversial, confusing and potentially not very useful in the application of this Directive.*

Amendment 33  
Article 2, paragraph 1, point (21)

(21) "emission" means the release in the environment of substances, preparations, organisms *or micro-organisms*.

(21) "emission" means the release in the environment of substances, *radiation*, preparations, organisms.

*Justification*

*Release of radioactive materials have potentially serious local and transboundary impacts. Incidents are frequently related to the handling of radioactive liquids, storage of combustibles*

*etc. Most incidents which have occurred in Western Europe have resulted from human error during operations.*

*“Organisms” include micro-organisms.*

#### Amendment 34

Article 2, paragraph 1, point 21 a (new)

***(21a) “organism” means any biological entity, cellular or non-cellular, capable of replication or of transferring genetic material, including viruses, viroids, animal and plant cells in culture;***

#### *Justification*

*The term “organism”, used in Article 2 (1) point 21, should be defined in line with Article 2 point 1 of Directive 2001/18/EC and in line with the – more specific – definition of “micro-organism”, given by Art. 2 (a) of Council Directive 90/219/EC.*

#### Amendment 35

Article 3, paragraph 1

1. This Directive shall apply to environmental damage caused by ***the operation of any of the occupational activities listed in Annex I***, and to any imminent threat of such damage occurring by reason of any of those activities.

1. This Directive shall apply to environmental damage caused by ***or that is likely to be caused by, or in connection with the operation of any occupational activity or any substance used in any occupational activity***, and to any imminent threat of such damage occurring by reason of any of those activities ***or substances***.

#### *Justification*

*The deciding factor in determining liability for environmental damage should be the seriousness of the environmental damage caused, rather than the arbitrary nature of the activities causing damage. For reasons of clarity, damage that is not caused by the operation itself but is in connection with it should also be explicitly mentioned.*

Amendment 36  
Article 3, paragraph 2

**2. This Directive shall apply to *deleted*  
biodiversity damage caused by the  
operation of any occupational activities  
other than those listed in Annex I, and to  
any imminent threat of such damage  
occurring by reason of any of those  
activities.**

*Justification*

*The deciding factor in determining liability for environmental damage should be dependent on the actual damage caused to the environment rather than the arbitrary nature of the activity causing the damage.*

Amendment 37  
Article 3, paragraph 3

**3. This Directive shall not apply to environmental damage *or to* any imminent threat of such damage arising from *an incident in respect of which liability or compensation is regulated by any of the following agreements:***

**(a) *the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;***

**(b) *the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;***

**(c) *the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;***

**(d) *the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;***

**(e) *the Convention of 10 October 1989 on Civil Liability for Damage Caused***

**3. This Directive shall apply to environmental damage *caused by, or in connection with* any imminent threat of such damage arising from *or in connection with maritime transport to the extent that the international conventions listed in part A to Annex I do not impose stricter liability for that damage.***

*The Directive shall apply in all cases where the relevant international conventions have not yet been ratified by the European Community and/or the Member States and have not yet entered into force.*

*In cases where the International Agreements/Protocols listed in Annex A to Annex I do not cover environmental damage, this Directive shall apply complementarily so as to cover the full restoration of the environmental damages in line with Annex II.*

**during Carriage of Dangerous Goods by  
Road, Rail and Inland Navigation Vessels.**

*Justification*

*The rapporteur cannot accept that marine oil pollution is excluded from the directive in Article 3.3. The wording of the Article in the Directive automatically excludes any incident involving marine pollution covered under the international conventions on pollution from shipping. However, the aims of these conventions and the directive on environmental liability differ. Moreover, damage to biodiversity as such, when there is no property or economic loss involved is not covered in the international conventions. As a consequence serious oil spills or emissions of other hazardous or noxious substances – environmental damage with particular relevance to this directive, will not be remedied. Furthermore, the damage covered by these international conventions on pollution from shipping falls more in the sphere of traditional damage and economic loss, which does not fall under the directive on environmental liability. In order to avoid any overlapping of the two liability regimes the following formula is suggested: the Directive shall apply to environmental damage caused by pollution from shipping to the extent that no liability is imposed by the international shipping pollution conventions in relation to that damage. To the extent that environmental damage is compensated, remediated or prevented under the regime of one of the international conventions, the Directive need not apply.*

*In addition, where any of the international conventions has not yet entered into force, this Directive should apply, as otherwise there will be a potential gap in the compensation of environmental damage.*

Amendment 38

Article 3, paragraph 4

4. This Directive shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the operation of the activities covered by the Treaty establishing the Atomic Energy European Community or caused by an incident or activity in respect of which liability or compensation is regulated by any of the **following** agreements:

**(a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;**

4. This Directive shall apply to such nuclear risks or environmental damage **caused by**, or **any** imminent threat of such damage as may be caused by, **or in connection with**, the operation of the activities covered by the Treaty establishing the Atomic Energy European Community or caused by an incident or activity in respect of which liability or compensation is **not** regulated by any of the agreements **listed in part B to Annex I.**

**The Directive shall apply in all cases where the relevant international conventions have not yet been ratified by**

*(b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, and the Vienna Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;*

*(c) the Joint Protocol of 21 September 1988 Relating to the Application of the Vienna Convention and the Paris Convention;*

*(d) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.*

*the European Community and/or the Member States and have not yet entered into force.*

*In cases where the International Agreements/protocols listed in Annex B to Annex I do not cover environmental damage, this Directive shall apply complementarily so as to cover the full restoration of the environmental damages in line with Annex II.*

#### *Justification*

*The rapporteur cannot accept that marine oil pollution is excluded from the directive in Article 3.3. The wording of the Article in the Directive automatically excludes any incident involving marine pollution covered under the international conventions on pollution from shipping. However, the aims of these conventions and the directive on environmental liability differ. Moreover, damage to biodiversity as such, when there is no property or economic loss involved is not covered in the international conventions. As a consequence serious oil spills or emissions of other hazardous or noxious substances – environmental damage with particular relevance to this directive, will not be remedied. Furthermore, the damage covered by these international conventions on pollution from shipping falls more in the sphere of traditional damage and economic loss, which does not fall under the directive on environmental liability. In order to avoid any overlapping of the two liability regimes the following formula is suggested: the Directive shall apply to environmental damage caused by pollution from shipping to the extent that no liability is imposed by the international shipping pollution conventions in relation to that damage. To the extent that environmental damage is compensated, remediated or prevented under the regime of one of the international conventions, the Directive need not apply.*

*In addition, where any of the international conventions has not yet entered into force, this Directive should apply, as otherwise there will be a potential gap in the compensation of environmental damage.*

*Liability or compensation should be regulated by agreements which are ratified and in force, including future agreements for the main objectives of environmental liability (restoration and compensation) to be achieved.*

Amendment 39  
Article 3, paragraph 6

6. This Directive shall **not** apply to environmental damage or to an imminent threat of such damage caused by pollution of a widespread, diffuse character, where it is **impossible** to establish a causal link between the damage and the activities of certain individual operators.

6. This Directive shall apply to environmental damage or to an imminent threat of such damage caused by pollution of a widespread, diffuse character, where it is **possible** to establish a causal link between the damage and the activities of certain individual operators.

*Justification*

*The proposed wording implies that where damage is widespread and diffuse, establishment of a causal link between damage and identifiable polluters is unlikely to be possible. Even if such proof is sometimes difficult, it is not always the case that it cannot be established. The alternative wording proposed here, whilst respecting the Commission's common-sense proposal to exclude pollution where no causal link can be established, also makes it clear that where those responsible for "pollution of a widespread, diffuse character" can be identified, the provisions of the directive apply as normal.*

Amendment 40  
Article 3, paragraph 7

**7. This Directive shall not apply to activities the sole purpose of which is to serve national defence.** **delete**

*Justification*

*This exception poses a major obstacle to attributing responsibility to those operators who have caused environmental damage in effect preventing the operation of the polluter-pays principle.*

Amendment 41  
Article 3, paragraph 8

8. Subject to Article 11(3), this Directive shall

8. Subject to Article 11(3) **and without**



not give private parties a right of compensation for any economic loss sustained in consequence of environmental damage or of an imminent threat of such damage.

*prejudice to relevant national law*, this Directive shall not give private parties a right of compensation for any economic loss sustained in consequence of environmental damage or of an imminent threat of such damage.

#### *Justification*

*The principle of subsidiarity should apply in relation to this issue. In the Member States where national laws give a right to compensation for economic loss, those laws should not be overridden by this Directive.*

Amendment 42  
Article 3 a (new)

#### *Article 3 a*

##### *Establishment and monitoring of conservation status*

*Without Prejudice to Article 11 of Directive 92/43/EEC, Member States shall establish and monitor the conservation status of the habitats and species listed in Annex I, II and IV of that Directive.*

#### *Justification*

*Member States should undertake surveillance of the conservation status of the habitats with particular regard to priority natural habitat types and priority species.*

Amendment 43  
Article 4

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, *the competent authority shall either require* the operator *to* take the necessary preventive measures *or shall itself*

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator *shall* take, *without delay and without waiting for a request to this effect by the competent*

*take such measures.*

**2. Without prejudice to any further action which could be required by the competent authority under paragraph 1, Member States shall provide that, when operators are aware of an imminent threat or ought to be aware of such an imminent threat, those operators are required to take the necessary measures to prevent environmental damage from occurring, without waiting for a request to do so by the competent authority.**

3. Member States shall provide that where appropriate, and in any case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the *relevant* operator, operators are to inform the competent authority of the situation.

4. If the operator fails to comply with the obligations laid down in paragraph 1 or 2, the competent authority shall take the necessary preventive measures.

*authority*, the necessary preventive measures.

*Delete*

3. Member States shall provide that where appropriate, and in case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator, operators are to inform the competent authority *of all relevant aspects* of the situation, *as soon as possible*.

**3a. The competent authority may:**

**(a) require the operator to provide**

**information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;**

**(b) give instructions to the operator to be followed on the necessary preventive measures to be taken;**

**(c) require the operator to take the necessary preventive measures;**

**(d) itself take the necessary preventive measures where there is urgency because of an immediate threat of damage and the operator has failed to act;**

4. If the operator fails to comply with the obligations laid down in paragraph 1 or **3(b) and (c)**, the competent authority shall take the necessary preventive measures.

*(This situation must not in any circumstances lead to the principle of “tax payer pays” replacing that of “polluter pays”;*)

**4a. The operator and the competent authority shall immediately inform any other Member State likely to be affected**

*about the environmental damage.*

*Justification*

*The initial liability for taking the preventive measures where there is an imminent threat of damage lies with the operator. Where damage appears imminent and the operator does not take action, the public authority must be able to take the necessary measures in place of the operator. The Member States' responsibilities will remain thus in cases where the operator does not fulfil its obligations.*

Amendment 44

Article 5

1. Where environmental damage has occurred the **competent authority** shall either require the operator to take the necessary restorative measures or shall itself take such measures.

1. Where environmental damage has occurred the **operator** shall, *without delay, inform the competent authority of all relevant aspects of the situation and take the necessary restorative measures; when operators are aware that environmental damage has occurred and have appropriate emergency plans in place, those operators are required and empowered* to take necessary restorative measures *possible within the scope of such emergency plans, without waiting for a request to do so by the competent authority;*

*Ia. The competent authority may:*

*(a) require the operator to take the necessary restorative measures;*

*(b) require the operator to provide supplementary information on any damage that has occurred;*

*(c) give instructions to the operator to be followed on the necessary restorative measures to be taken;*

*(d) itself take the necessary restorative measures. (This situation must not in any circumstances lead to the principle of “tax payer pays” replacing that of “polluter pays”);*

2. If the operator fails to comply with *a request issued under paragraph 1*, the competent authority shall *take the necessary restorative measures*.

**3. The necessary restorative measures shall be determined in accordance with Annex II.**

4. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary restorative measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

In making that decision, the competent authority shall have regard, *inter alia*, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of *natural recovery*.

***1b. The competent authority shall decide which restoration measures shall be implemented in accordance with Annex II and with the co-operation of the relevant operator;***

2. If the operator fails to comply with *the obligations laid down in paragraphs 1 or 2 (b) and (c)*, the competent authority shall *ensure that these measures are taken*;

**Delete**

4. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary restorative measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first. In making that decision, the competent authority shall have regard, *inter alia*, to the nature, extent and gravity of the various instances of environmental damage concerned, ***as well as to any risk to human health*** and to the possibility of ***primary restoration***.

#### *Justification*

*The initial liability for rectifying damage caused to the environment lies with the operator. The responsibility of authorities should at first hand remain limited to monitoring and advising. This system would strengthen the Commission's required "polluter pays principle". However the authorities need competence to carry out measures when it considers them necessary. Operators should be empowered, and may even have an obligation under other legislation, to apply emergency plans when damage occurs to ensure quick restoration and prevent greater damage.*

#### Amendment 45 Article 6, paragraph 1, introduction

1. ***Subject to article A 9(1)***, Member States

1. Member States shall ensure that the

shall ensure that the necessary preventive or restorative measures are taken:

necessary preventive or restorative measures are taken:

*Justification*

*Obvious after the deletion of 4 words of Article 9, paragraph 1.*

Amendment 46

Article 6, paragraph 1, letters (b) and (c)

*(b) where the operator can be identified but has insufficient financial means to take any of the necessary preventive or restorative measures;* *deleted*

*(c) where the operator can be identified but has insufficient financial means to take all of the necessary preventive or restorative measures; or* *deleted*

*Justification*

*The inclusion of these points would give an unnecessarily strong legal possibility for an operator to withdraw from the obligations to take necessary preventive and remedying measures.*

Amendment 47

Article 6, paragraph 2

2. Measures taken in pursuance of paragraph 1(a), **(b) and (c)** shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the EC Treaty.

2. Measures taken in pursuance of paragraph 1(a), shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the EC Treaty.

*Justification*

*The deletion of point (b) and (c) in Article 6, paragraph 2, follows from amendment 46.*

Amendment 48  
Article 7, paragraph 2

2. The competent authority shall also recover from the operator who has caused the damage or the imminent threat of damage the costs of assessing environmental damage and, as the case may be, the costs of assessing an imminent threat of such damage.

2. The competent authority shall also recover from the operator ***or the third person*** who has caused the damage or the imminent threat of damage the costs of assessing environmental damage and, as the case may be, the costs of assessing an imminent threat of such damage.

*Justification*

*So as to cover all responsibilities.*

Amendment 49  
Article 7, paragraph 2 a (new)

***2a. Subject to Articles 8, 9 and 10, where persons and/or qualified entities adversely affected or likely to be adversely affected by environmental damage have incurred costs by taking preventive measures in relation to damage or the imminent threat of damage under this Directive, they shall be entitled to recover those costs from the operator who has caused the damage.***

*Justification*

*If adversely affected persons and /or qualified entities incur costs by taking preventive measures, they are doing so instead of the competent authority and should therefore enjoy the same right to be able to claim back the costs incurred from the operator who committed the damage/imminent threat.*

Amendment 50  
Article 9, paragraph 1

1. **Subject to Article 10, this** Directive shall not cover environmental damage or an imminent threat of such damage caused by:

1. **This** Directive shall not cover environmental damage or an imminent threat of such damage caused by:

*Justification*

*Self-explanatory.*

Amendment 51  
Article 9, paragraph 1, letter (a)

(a) an act of armed conflict, hostilities, civil war or insurrection;

(a) an act of armed conflict, hostilities, civil war, **terrorism** or insurrection;

*Justification*

*In the light of recent events, terrorism should be explicitly mentioned as an exception.*

Amendment 52  
Article 9, paragraph 1, letter (c)

**(c) an emission or event allowed in applicable laws and regulations, or in the permit or authorisation issued to the operator;**

**delete**

*Justification*

*This exception fundamentally undermines the “polluter pays” principle, giving rise to a situation where operators may avoid liability for environmental damage they have caused, thus shifting the ultimate financial burden of restoring the environmental damage onto the taxpayer. Such a defence is not part of existing national environmental liability regimes of EU Member States.*

Amendment 53

Article 9, paragraph 1, letter (d)

*(d) emissions or activities which were not considered harmful according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.* **delete**

*Justification*

*If this defence is maintained, it will undermine the precautionary and the “polluter pays” principles and would allow operators to escape liability. Also, the limited provision of strict liability is further eroded and the proposed regime is de facto turned into a fault-based liability regime leading to potentially serious environmental damage not being covered.*

Amendment 54

Article 9, paragraph 2

*2. Paragraph 1(c) and (d) shall not apply if the operator has been negligent.* **delete**



*Justification*

*Follows from the the deletions made in amendments 52 and 53.*

Amendment 55

Article 9, paragraphs 3, letter (a)

(a) an act done by a third party with intent to cause damage, and the damage or imminent threat in question resulted despite the fact that appropriate safety measures were in place;

(a) an act done by a third party with **or without** intent to cause damage, and the damage or imminent threat in question resulted despite the fact that appropriate safety measures were in place;

*Justification*

*Absence of intent on the part of the third party must be included in this paragraph.*

Amendment 56

Article 10 paragraph 1

1. Member States shall ensure that in all circumstances operators bear any costs relating to **preventive** measures which they were required to take as a matter of course in order to comply with the legislative, regulatory and administrative provisions regulating their activities, **including the terms of any permit or authorisation.**

1. Member States shall ensure that in all circumstances operators bear any costs relating to **all** measures which they were required to take as a matter of course in order to comply with the legislative, regulatory and administrative provisions regulating their activities.

*Justification*

*The objective of the directive is not only the prevention of an environmental damage but also the restoration of it in case it occurs. The operator should thus also bear any costs relating not only to the preventive measures but to all measures. Obvious deletion after amendment 52.*

1. *Subject to paragraph 2, where the competent authority is able to establish with a sufficient degree of plausibility and probability that one and the same instance of damage has been caused by the actions or omissions of several operators, Member States may provide either that the relevant operators are to be held jointly and severally liable for that damage or that the competent authority is to apportion the share of the costs to be borne by each operator on a fair and reasonable basis.*

2. Operators who are able to establish the extent to which the damage results from their activities shall be required to bear only such costs as relate to that part of the damage.

3. This Directive is without prejudice to any provisions of national law concerning the rights of contribution or recourse.

1. *When the same instance of damage has been caused by the actions or omissions of several operators, and without prejudice to the full recovery of the costs, Member States shall provide that the relevant operators are to be held jointly and severally liable for that damage, unless a liable party can demonstrate its share of responsibility for the damage, in which case the competent authority is to apportion the share of the costs to be borne by each operator on a fair and reasonable basis, or refer the matter to the relevant court.*

*In the event of multipartite causality, where there is a dispute between operators or between the operator and the national authority as to the extent of their liability, the competent judge or equivalent body shall decide how costs arising from damage are to be apportioned.*

2. Operators who are able to establish the extent to which the damage results from their activities shall be required to bear only such costs as relate to that part of the damage.

*2a. Liability should be limited to a proportionate share for minor contributors at multi-party sites, while retaining joint and several liability for larger contributors.*

3. This Directive is without prejudice to any provisions of national law concerning the rights of contribution or recourse.

#### *Justification*

*In the event of conflict as to the extent of the liability of different operators, the matter can be referred to the relevant court so that the judge can decide upon the apportionment of costs. Proportionate liability shall be applied to minor contributors at multi-party sites.*

Amendment 58

Article 12

The competent authority shall be entitled to initiate cost recovery proceedings against the operator who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive during a period of five years from the date on which the measures in question were *effected*.

The competent authority shall be entitled to initiate cost recovery proceedings against the operator who has caused the damage or the imminent threat of damage in relation to any *preventive or restorative* measures taken *by the competent authority* in pursuance of this Directive during a period of five years from the date on which the measures in question were *completed or the date on which the operator, liable for the damage or imminent threat of damage was identified, whichever is the later*.

*Justification*

*The intention of this paragraph is to give competent authorities a sufficient period of time after having taken restorative or preventive measures to recover their costs from the relevant operators. The suggested amendment merely clarifies the intended meaning of this Article.*

Amendment 59

Article 13, paragraph 5 a (new)

***5a. All decisions made by the competent authority under Article 13 shall be subject to the rights of the operators to appeal against those decisions to a court or other independent and impartial body established by the law. Any such appeal procedures shall not delay the taking of urgent response measures so as to cause further environmental or economic damage.***

*Justification*

*In order to comply with Article 6 of the European Convention on Human Rights and associated case law, all enforcement decisions of the competent authority should be subject to a right of appeal.*

Amendment 60  
Article 13, paragraph 5 a (new)

***5a. In cases where there is a threat of imminent damage to the environment, Member States shall ensure that there are procedures for the competent authority or persons adversely affected or likely to be adversely affected and/or qualified entities to take emergency action against the operator without the need to first comply with the procedures set out in this Article. In such a case any procedures which were not carried out, shall be carried out, if still appropriate, as soon as practicable after emergency action has been taken.***

*Justification*

*At the moment the Directive provides for a lengthy investigation process before preventive/restorative measures can be taken. Where there is a threat of imminent damage this is not appropriate and emergency procedures need to be available.*

Amendment 61  
Article 14, paragraph 1

1. Without prejudice to any investigation initiated by the competent authority of its own motion, ***persons adversely affected or likely to be adversely affected by environmental damage and qualified entities*** shall be entitled to submit to the competent authority any observations relating to instances of environmental damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

1. Without prejudice to any investigation initiated by the competent authority of its own motion, ***the “public concerned”, including non-governmental organisations***, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive. ***(c) in cases where there is a threat of imminent damage to the environment, to take direct legal action***

### *Justification*

*The better involvement of citizens in the decision making process according to the Commission's approach regarding future E.U. governance and the Aarhus Convention to which the E.U. is a signatory party, is required.*

*The rights the Directive gives to directly affected and to qualified entities are too weak and indirect to be able to ensure that the Directive's objectives are met. Merely being able to request the competent authority to take action or having the right to bring judicial review proceedings in relation to the competent authority's decision is not sufficient. These courses of action normally entail lengthy delays. Competent authorities on the other hand, may face a conflict of interest, and be over-burdened by the demands of the proposed regime.*

*Against this background, and given that this Directive is very much linked to the public interest, the aims of the Directive could be more effectively achieved by allowing public interest groups and individuals to take action directly against polluters in the case of imminent damage to the environment. This would also effect a strengthening the self-regulatory capacity of economic operators and civil society.*

### Amendment 62

#### Article 14, paragraph 2

**2. *The competent authority shall be entitled to require that the*** request for action be accompanied by all relevant information and data supporting the observations submitted in relation to the environmental damage in question.

**2. *The*** request for action shall be accompanied by all relevant information and data supporting the observations submitted in relation to the environmental damage in question.

### *Justification*

*Obvious modification considering that operators control large amounts of relevant information.*

### Amendment 63

#### Article 14, paragraph 6 a (new)

***6 a. Where either a person adversely affected by environmental damage, a qualified entity or competent authority takes action against the operator under this Article, the procedures set out in Article 13 shall apply.***

*Justification*

*This amendment merely seeks to make the link between Article 13 and 14.*

Amendment 64  
Article 15, paragraph 1

1. Any person who has lodged a request for action under this Directive, or any qualified entity which has lodged such a request, shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority.

1. Any person ***or qualified entity or public concerned according to the provisions of the Aarhus Convention*** who has lodged a request for action under this Directive, shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority.

*Justification*

*Every person has the right to live in an environment adequate to its health and well-being, and has the right to protect the environment. Considering that to be able to assert this right and observe this duty, citizens must have right to information, be entitled to participation in decision making and have access to justice in environmental matters.*

Amendment 65  
Article 16

Member States shall *encourage the use by operators of any* appropriate insurance or other forms of financial security. Member States shall also *encourage the development of appropriate insurance or other financial security instruments and markets* by the appropriate economic and financial operators, *including the financial services industry*.

Member States shall *take measures to establish a mandatory financial security system, in a form and to the extent which is customary in bona fide business, and to ensure that operators use* appropriate insurance or other forms of financial security, *within five (5) years of the entering into force of the Directive*.

*Member States shall encourage recourse to appropriate insurance cover or other forms of financial security on the part of operators carrying out activities other than those listed in Annex I.*

Member States shall also *take measures to improve* the development, by the appropriate economic and financial operators, *of financial security instruments and markets*.

*As of 5 years after the date referred to in Article 21(1), Member States shall require operators to obtain appropriate insurance or any other financial security instrument for the purpose of meeting the obligations to prevent or restore water, land and biodiversity damage under Art. 6(1).*

#### *Justification*

*A system of compulsory financial guarantee/insurance should be part of the liability regime. The lack of obligatory insurance puts a great financial burden on the local authorities and municipalities who are obliged to act and take restorative measures when an operator fails to comply with the request by the competent authorities, or when the repair costs exceed the operator's financial capacities.*

*Such a scheme is envisaged for operators who carry out activities listed in Annex I; operators carrying out activities other than those listed in Annex I are encouraged to use such instruments.*

#### Amendment 66 Article 17

Where environmental damage affects or is likely to affect several Member States, those

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Where environmental damage affects or is likely to affect several Member States, those

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Member States shall co-operate with a view to ensuring that proper and effective preventive action and, where necessary, restorative action is taken in respect of any such environmental damage.

Member States shall co-operate with a view to ensuring that proper and effective preventive action and, where necessary, restorative action is taken in respect of any such environmental damage.

***In the case an environmental damage has occurred the affected Member State shall provide without delay sufficient information to other Member States which may potentially be affected.***

***If a Member State identifies a damage which occurred outside its territory it shall immediately report the issue to the Commission which in turn shall have to inform any other Member State concerned.***

#### *Justification*

*It should be more clearly defined when Member States are obliged to inform the Commission and/or the neighbouring states of damage or threat of damage. (e.g. Chernobyl, gas explosions etc.)*

#### Amendment 67

#### Article 18, paragraph 2

2. ***This Directive shall not prevent*** Member States ***from adopting*** appropriate measures, such as the prohibition of double recovery, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by damage.

2. Member States ***shall adopt*** appropriate measures, such as the prohibition of double recovery, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by damage.

#### *Justification*

*Liabile operators should not have to pay twice in respect of the same damage because both civil and environmental liability regimes apply.*



Amendment 68  
Article 18 a (new)

Article 18a

Additional legislation regarding damage caused by GMOs

*The Commission will present a proposal to supplement the regulatory framework on liability for damage caused by genetically modified organisms with a view to complete the legislation necessary for development in the field of modern biotechnology. The proposal will, in particular, address damage caused by the presence of genetically modified organisms in products, the producers of which did not make use of such organisms.*

*Justification*

*It is quite evident that the use of GMOs may lead to forms of damage which are neither covered by the product liability Directive 85/374/EEC (as last amended by Directive 1999/34/EC) nor by the proposed environmental liability scheme. In particular damage caused to farmers through the contamination of conventional or organic products with GMOs is not covered by either scheme. The Commission should therefore present as soon as possible a regulatory framework on liability for damage caused by genetically modified organisms with a view to complete the legislation necessary for development in the field of modern biotechnology.*

Amendment 69  
Article 19, paragraph 1

1. This Directive shall **not** apply to damage **caused by activities that have been carried out before the date referred to in Article 21(1). In particular, this Directive shall not apply to damage caused by waste the disposal of which took place lawfully in authorised disposal facilities before the date referred to in Article 21(1) or by substances released into the environment before the date referred to in Article 21 (1).**

1. This Directive shall apply to **environmental damage which took place after the date referred to in Article 21 (1), unless the operator can prove that the damage is the result of an activity that took place and ended before the date referred to in Article 21 (1);**

### *Justification*

*The way Article 19 is drafted is confusing and potentially misleading, Therefore, we suggest to take the date at which the damage occurred as the reference point for the application of the Directive. This should also alleviate the complexities faced by the competent authority in relation to the burden of the proof by limiting it, in the first instance, to proving that the damage occurred at a certain date. If the activity causing the damage ended before the relevant date, and this is to be used by an operator as a reason for escaping damage, then it should be for the operator to prove this, not the competent authority.*

### Amendment 70

Article 19, paragraph 1 a (new)

***(1a) This Directive shall not apply to damage which results from an emission, event or incident which took place more than 40 years earlier.***

### *Justification*

*The directive should not have retroactive effect. Provisions to the advantage of the authorities concerning the degree of plausibility and probability of the time of causation of the damage are inappropriate and could, contrary to the principle of exclusion of retroactive effect laid down in paragraph 1, lead to a situation where an operator was compelled to remedy damage even when the causation of the damage took place before the directive's entry into force, since the full burden would be incumbent on him of proving that the damage was caused before the relevant date. In case of doubt, the authority will have to provide proof that the directive is applicable, according to the principles of administrative law.*

### Amendment 71

Article 19, paragraph 3

***3. Paragraph 2 shall not apply to operators who, within one year of the date referred to in Article 21(1), have lodged with the competent authority a statement identifying any environmental damage that may have been caused by their activities before the date referred to in Article 21(1).***      ***Delete***

***Member States shall take the necessary measures to ensure that the statement submitted by the operators may be relied on***

*with respect to its quality and veracity.*

#### *Justification*

*This provision concerning the temporal scope of the directive contains a questionable (and irrefutable) “assumption in favour of the operator” which the authority would not even be able to refute with reference to the inadequacy of the statement. A mere statement by the operator would therefore result in removing the lesser burden of proof to the advantage of the authority. This provision is not justified on any grounds and should therefore be deleted.*

*Naturally, operators are free to obtain evidence once the directive has entered into force where there is doubt that damage had been caused before or after its entry into force. Such statements or reports commissioned by the operator are then subject to the normal assessment of the evidence by the authority in accordance with paragraphs 1 and 2.*

#### Amendment 72

##### Article 20

#### Reports

Member States shall report to the Commission on the experience gained in the application of this Directive by [date (*five years* after the date referred to in Article 22(1))] at the latest. The national reports shall include the information and data set out in Annex III.

On that basis the Commission shall submit a report to the European Parliament and the Council *together with any proposal which it may consider appropriate.*

#### Reports *and review of the directive*

Member States shall report to the Commission on the experience gained in the application of this Directive within [date (*42* months after the date referred to in Article 22(1))] at the latest *and thereafter every three years*. The national reports shall include the information and data set out in Annex III.

On that basis the Commission shall submit a report to the European Parliament and the Council *within [date (four years after the date referred to in Article 22(1))] accompanied by proposals as appropriate, considering especially:*

- *the need for an extension of Annex I;*
- *the impact of the exception foreseen in Article 9 of the Directive on the effectiveness of the liability regime; new developments in the field of financial security and damage evaluation;*

#### *Justification*

*This amendment is in line with the am. on recital 29. It is important to give a more precise description of which aspects need to be especially considered during the review of the*

*directive (similarly to the provisions in the draft emissions trading directive).*

Amendment 73  
Annex I, Title

**ACTIVITIES REFERRED TO IN  
ARTICLE 3(1)**

**ACTIVITIES REFERRED TO IN  
ARTICLE 16(1)**

*Justification*

*In the light of the changes made, Annex I should form the basis for the compulsory insurability of the activities contained in it.*

Amendment 74  
Annex I, indent –1 (new)

***- the operation of nuclear installations pursuant to Article 2(1) of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.***

*Justification*

*The nuclear sphere should be included in this context.*

Amendment 75  
Annex I, indent 7

- Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the ***supervision*** of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

- Waste management operations, including the collection, transport, ***co-incineration, shipment***, recovery and disposal of waste and hazardous waste, including the ***self monitoring*** of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste, Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ***and Council Regulation No 259/93 of 1 February 1993 on the supervision and control of shipments of***

**waste within, into and out of the European Community;**

*Justification*

*It is important to make sure that the shipment of waste is considered as an activity under Annex I.*

*As part of optimal environmental protection, waste co-incineration operations should be mentioned in this paragraph.*

*The text in Annex I should be amended so that it cannot contain any misunderstandings about local authorities' responsibility. The local authorities do not get the environmental liability due to their official duty as supervisors. A better wording instead of "supervision" is "self monitoring" which connects the liability clearer to the actual operator.*

Amendment 76

Annex I, indent 7, subparagraph 2

Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste

Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste [69] and the operation of incineration **and co-incineration** plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste

*Justification*

*The directive's scope should cover incineration (currently included in the proposal for a directive) and co-incineration (not currently included). Both activities are covered by the 'incineration of waste' directive on the grounds that they relate to 'thermal' processing of waste, either with a view to elimination (incineration) or with a view to producing energy or material products (co-incineration). They pose environmental risks of the same kind, which must be governed by analogous rules whoever the operators are.*

Amendment 77

Annex I, indent 13

- Any contained use, including transport, **of** genetically modified micro-organisms as defined **and within the scope of** Council Directive 90/219/EEC of 23 April 1990 on the contained

- Any contained use, including transport, **involving** genetically modified micro-organisms, as defined **by** Council Directive 90/219/EEC of 23 April 1990 on the contained

use of genetically modified micro-organisms.

use of genetically modified micro-organisms, **or recombinant genetic material<sup>1</sup> and any use of GMOs other than micro-organisms where containment measures are required by law to limit their contact with the general population and the environment;**

<sup>1</sup>**“Recombinant genetic material” means molecules that are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or molecules that result from the replication of those described above.**

#### *Justification*

*If the Directive applies only to activities “within the scope” of Directive 90/219/EEC, not only activities approved against that Directive would be excluded from Annex I (see Art. 9(1) c of the Commission’s proposal), but also those activities which have not been approved since they are exempt from the scope of Directive 90/219/EEC. In this case the scope of Annex I would entirely depend on simple comitology decisions taken in accordance with Art. 3, indent 2 of Directive 90/219/EEC.*

*Annex I should also apply to activities which do not involve whole GMMs but instead recombinant genetic material which may due to its well-known persistency also cause environmental damage.*

*While contained use of GMOs other than micro-organisms is currently unregulated by EU law, environmental damage caused by such use should not be excluded from Annex I.*

#### Amendment 78 Annex I, indent 14

- Any deliberate release into the environment **or** transport of genetically modified organisms as defined **and within the scope of** Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC.

- Any deliberate release into the environment, transport **and placing on the market** of genetically modified organisms as defined **by** Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, **and any other placing on the market of genetically modified organisms falling within the scope of legislation based on**

**Article 12 of that Directive;**

*Justification*

*Directive 2001/18/EEC covers deliberate releases as well as the placing on the market (“making available to third parties”, see Art. 2(4)) of GMOs. The exclusion of “placing on the market” of GMOs from Annex I would mean that companies marketing (unauthorised) GMOs could benefit from Art. 8 of the proposed Directive, whereas farmers cultivating such GMOs could not.*

*If the Directive only applies to placing on the market “within the scope” of Directive 2001/18/EC, commercial activities which are or may be exempt from the scope of that Directive by way of “sectoral legislation” (see Art. 12) would also be excluded from Annex I. In this case Annex I would not apply to GMOs, covered by Council Regulation (EEC) No 2309/93 (see Art. 12(2) of Directive 2001/18/EEC), and it would no longer apply to GMOs destined to be used for food or feed purposes, once the Commission’s proposal for a regulation on genetically modified food and feed (COM(2001) 425) has been adopted.*

Amendment 79

Annex I, indent 14 a (new)

***- The operation of installations for the generation of energy by means of nuclear fission, the transport of fissile material for the purpose of energy generation, the operation of installations for the production of nuclear fuel, the operation of installations for reprocessing, interim or final storage of nuclear fuel.***

*Justification*

*Nuclear risks and the resultant environmental damage are symbols of environmentally hazardous activities. They are no less drastic than the cases cited in the introductory section of the explanatory memorandum to the Commission's proposal and it is not evident on what factual grounds they warrant special treatment. The Commission's proposal would have the absurd consequence of totally excluding environmental damage caused in connection with production of energy from fissile material. None of the international conventions listed in the proposal provide for any form of liability for environmental damage. In addition, not all Member States have ratified these conventions.*

*There is no justification for the resultant boost to the nuclear energy industry over other forms of energy production (e.g. by river or storage power plants).*

*The European Union is not barred from introducing rules on liability for such environmental damage within the Community which are more stringent than those provided in those conventions.*

*It is therefore sensible to include nuclear risks in Annex I and to introduce liability under this directive.*

Amendment 80  
Annex I, part A (new)

***A. International Conventions referred to in Article 3.3***

***(a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;***

***(b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;***

***(c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;***

***(d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;***

***(e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.***

*Justification*

*Follows from amendments 37 and 38.*

Amendment 81  
Annex I, part B (new)



*A a. International Conventions referred to in Article 3.4*

*(a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;*

*(b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, and the Vienna Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;*

*(c) the Joint Protocol of 21 September 1988 Relating to the Application of the Vienna Convention and the Paris Convention;*

*(d) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.*

*Justification*

*Follows from amendments 37 and 38.*

Amendment 82

Annex II, introduction

1. This Annex sets out the rules to be followed **by the competent authority** in order to ensure the remedying of environmental damage.

1. This Annex sets out the rules to be followed in order to ensure the remedying of environmental damage, **using the best available option, the expenditures being covered by the operator.**

*Justification*

*To be in line with the previous relevant amendments.*

Amendment 83  
Annex II, point 2, subpoints 2.1

2.1. Remedying of environmental damage, *in terms of biodiversity damage and water pollution*, is achieved through the restoration of the environment as a whole to its baseline condition. Subject to point 3.2.3. below, this objective is achieved in principle through the return of damaged habitats, species and associated natural resources services or waters concerned to baseline condition and compensation for any interim losses incurred. Restoration is done through rehabilitating, replacing or acquiring the equivalent of damaged natural resources and/or services at the site originally damaged or at a different location.

2.1. Remedying of environmental damage is achieved through the restoration of the environment as a whole to its baseline condition. Subject to point 3.2.3. below, this objective is achieved in principle through the return of damaged habitats, species and associated natural resources services or waters *or soils or subsoils* concerned to baseline condition and compensation for any interim losses incurred. Restoration is done through rehabilitating, replacing or acquiring the equivalent of damaged natural resources and/or services at the site originally damaged or at a different location.

*Justification*

*The proposal's different objectives for remedying different environmental mediums. While "bio-diversity" and "water" are to be preserved broadly in their natural state, in the case of "soil" it is protected and the obligation to pay damages activated only if the soil contaminants entail actual health risks. This differentiation does not appear to be justifiable and is tantamount to allowing a great deal of scope for soil pollution.*

Amendment 84  
Annex II, paragraph 2.2

2.2. Remedying of environmental damage, in terms of water pollution and in terms of biodiversity damage, also implies that any *serious* harm or *serious* potential harm to human health be removed should such a harm be present.

2.2. Remedying of environmental damage, in terms of water pollution and in terms of biodiversity damage, also implies that any *significant* harm or *significant* potential harm to human health be removed should such a harm be present.

*Justification*

*Self-explanatory*

Amendment 85  
Annex II, paragraph 2.3

2.3. Where polluted soil or subsoil gives rise to a **serious** harm to human health or could pose such a risk, the necessary measures shall be taken to ensure that the relevant contaminants are controlled, contained, diminished or removed so that the polluted soil does not pose any **serious** harm or **serious** potential harm to human health which would be incompatible with the current or plausible future use of the land concerned. Plausible future use shall be ascertained on the basis of the land use regulations in force when the damage occurred.

2.3. Where polluted soil or subsoil gives rise to a **significant** harm to human health or could pose such a risk, the necessary measures shall be taken to ensure that the relevant contaminants are controlled, contained, diminished or removed so that the polluted soil does not pose any **significant** harm or **significant** potential harm to human health which would be incompatible with the current or plausible future use of the land concerned. Plausible future use shall be ascertained on the basis of the land use regulations in force when the damage occurred.

*Justification*

*Self explanatory*