

# Comparison of the ELD, the UNEP Guidelines and the Lugano Convention

Environmental Liability 2011

Legal Analysis

*Justice and Environment 2011*

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### Environmental Liability 2011

#### Legal Analysis

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	1993 <b>Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
<b>Object &amp; Purpose</b>	<b>Article 1 Subject Matter</b> The purpose of this Directive is to establish a framework of environmental liability based on the “polluter pays” principle, to prevent and remedy environmental damage.	<b>Guideline 1: Objective</b> The objective of the present guidelines is to provide guidance to States regarding domestic rules on liability, response action and compensation for damage caused by activities dangerous to the environment, taking into account the polluter pays principle.	<b>Article 1 – Object and purpose</b> This Convention aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment and also provides for means of prevention and reinstatement.
<b>Scope</b>	<b>Article 3 Scope</b> 1. This Directive shall apply to: (a) environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities; (b) damage to protected species and natural habitats caused by any	<b>Guideline 2: Scope of application</b> 1. The present guidelines apply to liability, response action and compensation for damage caused by activities dangerous to the environment. 2. They are not intended to apply to damage caused by activities dangerous to the environment that	See <b>Article 1</b> (“adequate compensation for damage resulting from activities dangerous to the environment”)  <b>Article 2 – Definitions</b> c. However, the following genetically modified organisms are not covered by the Convention: a. organisms obtained by mutagenesis on condition that

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	<p>occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.</p> <p>2. This Directive shall apply without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction.</p> <p>3. Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.</p> <p><b>Article 4 Exceptions</b></p> <p>1. This Directive shall not cover environmental damage or an imminent</p>	<p>are covered by other domestic laws establishing special liability regimes or that principally relate to national defence, international security or natural disaster management.</p>	<p>the genetic modification does not involve the use of genetically modified organisms as recipient organisms; and</p> <p>b. plants obtained by cell fusion (including protoplast fusion) if the resulting plant can also be produced by traditional breeding methods and on condition that the genetic modification does not involve the use of genetically modified organisms as parental organisms.</p> <p><b>Article 4 – Exceptions</b></p> <p>n. This Convention shall not apply to damage arising from carriage; carriage includes the period from the beginning of the process of loading until the end of the process of unloading. However, the Convention shall apply to carriage by pipeline, as well as to carriage performed entirely in an installation or on a site inaccessible to the public where it is accessory to other</p>

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	<p>threat of such damage caused by:  (a) an act of armed conflict, hostilities, civil war or insurrection;  (b) a natural phenomenon of exceptional, inevitable and irresistible character.</p> <p>2. 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 falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State concerned.</p> <p>3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg</p>		<p>activities and is an integral part thereof.</p> <p>o. This Convention shall not apply to damage caused by a nuclear substance:</p> <ul style="list-style-type: none"> <li>a. arising from a nuclear incident the liability of which is regulated either by the Paris Convention of 29 July 1960 on third party liability in the field of nuclear energy, and its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on civil liability for nuclear damage; or</li> <li>b. if liability for such damage is regulated by a specific internal law, provided that such law is as favorable, with regard to compensation for damage, as any of the instruments referred to under subparagraph a above.</li> </ul> <p>p. This Convention shall not apply to the extent that it is incompatible with the rules of the</p>

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	<p>Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.</p> <p>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 activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.</p> <p>5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.</p> <p>6. This Directive shall not apply to activities the main purpose of which is to</p>		<p>applicable law relating to workmen's compensation or social security schemes.</p>

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	serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.		
<b>Geographical scope</b>			<p><b>Article 3 – Geographical scope</b>  Without prejudice to the provisions of Chapter III, this Convention shall apply:</p> <ul style="list-style-type: none"> <li>l. when the incident occurs in the territory of a Party, as determined in accordance with Article 34, regardless of where the damage is suffered;</li> <li>m. when the incident occurs outside the territory referred to in subparagraph a above and the conflict of laws rules lead to the application of the law in force for the territory referred to in subparagraph a above.</li> </ul> <p><b>Article 34 – Territories</b>  g. Any Signatory may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or</p>

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			<p>territories to which this Convention shall apply. Any other State may formulate the same declaration when depositing its instrument of accession.</p> <p>h. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorized to give undertakings. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.</p> <p>i. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary</p>

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			General.
<b>Definitions</b>	<p><b>Article 2 Definitions</b></p> <p>For the purpose of this Directive the following definitions shall apply:</p> <p>1. <b>"environmental damage"</b> means: (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favorable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;</p> <p>Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorized by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not</p>	<p><b>Guideline 3: Definitions</b></p> <p>1. The term <b>"activity dangerous to the environment"</b> means an activity or installation specifically defined under domestic law.</p> <p>2. The term <b>"damage"</b> means:</p> <p>(a) Loss of life or personal injury arising from environmental damage;</p> <p>(b) Loss of or damage to property arising from environmental damage;</p> <p>(c) Pure economic loss;</p> <p>(d) Costs of reinstatement measures, limited to the costs of measures actually taken or to be undertaken;</p> <p>(e) Costs of preventive measures, including any loss or damage caused by such measures;</p> <p>(f) Environmental damage.</p> <p>3. The term <b>"environmental damage"</b> means an adverse or negative effect on the environment that:</p> <p>(a) Is measurable taking into account</p>	<p><b>Article 2 – Definitions</b></p> <p>For the purpose of this Convention:</p> <p>a. <b>"Dangerous activity"</b> means one or more of the following activities provided that it is performed professionally, including activities conducted by public authorities:</p> <p>a. the production, handling, storage, use or discharge of one or more dangerous substances or any operation of a similar nature dealing with such substances;</p> <p>b. the production, culturing, handling, storage, use, destruction, disposal, release or any other operation dealing with one or more:</p> <ul style="list-style-type: none"> <li>genetically modified organisms which as a result of the properties of the organism, the genetic modification and the conditions</li> </ul>

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	<p>covered by Community law, in accordance with equivalent provisions of national law on nature conservation.  (b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;  (c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;  2. <b>"damage"</b> means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;  3. <b>"protected species and natural</b></p>	<p>scientifically established baselines recognized by a public authority that take into account any other human-induced variation and natural variation;  (b) Is significant, which is to be determined on the basis of factors such as:  (i) Long-term or permanent change, to be understood as change that may not be redressed through natural recovery within a reasonable period of time;  (ii) Extent of the qualitative or quantitative changes that adversely or negatively affect the environment;  (iii) Reduction or loss of the ability of the environment to provide goods and services, either of a permanent nature or on a temporary basis;  (iv) Extent of any adverse or negative effect or impact on human health;</p>	<p>under which the operation is exercised, pose a significant risk for man, the environment or property;</p> <ul style="list-style-type: none"> <li>• micro-organisms which as a result of their properties and the conditions under which the operation is exercised pose a significant risk for man, the environment or property, such as those micro-organisms which are pathogenic or which produce toxins;</li> </ul> <p>c. the operation of an installation or site for the incineration, treatment, handling or recycling of waste, such as those installations or sites specified in Annex II, provided</p>

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	<p><b>habitats</b>" means: (a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC;  (b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and  (c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives;  4. "<b>conservation status</b>" 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</p>	<p>(v) Aesthetic, scientific and recreational value of parks, wilderness areas and other lands.  4. The term "<b>operator</b>" means any person or persons, entity or entities in command or control of the activity, or any part thereof at the time of the incident.  5. The term "<b>incident</b>" means any occurrence or series of occurrences having the same origin that cause damage or create a grave and imminent threat of damage.  6. The term "<b>preventive measures</b>" means any reasonable measures taken by any person in response to an incident, to prevent, minimize or mitigate loss or damage, or to undertake environmental clean-up.  7. The term "<b>pure economic loss</b>" means loss of income, unaccompanied by personal injury or damage to property, directly deriving from an economic interest</p>	<p>that the quantities involved pose a significant risk for man, the environment or property;  d. the operation of a site for the permanent deposit of waste.  b. "<b>Dangerous substance</b>" means:  a. substances or preparations which have properties which constitute a significant risk for man, the environment or property. A substance or preparation which is ex-plosive, oxidizing, extremely flammable, highly flammable, flammable, very toxic, toxic, harmful, corrosive, irritant, sensitizing, carcinogenic, mutagenic, toxic for reproduction or dangerous for the environment within the meaning of Annex I, Part A to this Convention shall in any event be deemed to constitute such a risk;  b. substances specified in Annex I, Part B to this Convention. Without prejudice to the application of sub-paragraph a above, Annex I, Part B may restrict the specification of dangerous substances to certain quantities or concentrations, certain risks or certain situations.  c. "<b>Genetically modified organism</b>" means any</p>

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	<p>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;  The conservation status of a natural habitat will be taken as "favorable" when:  - its natural range and areas it covers within that range are stable or increasing,  - 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 favorable, as defined in (b);  (b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term</p>	<p>in any use of the environment and incurred as a result of environmental damage.  8. The term <b>"reinstatement measures"</b> means any reasonable measures aiming to assess, reinstate, remediate or restore damaged or destroyed components of the environment.  9. The term <b>"response action"</b> means preventive measures and reinstatement measures.</p>	<p>organism in which the genetic material has been altered in a way which does not occur naturally by mating and/or natural recombination. However, the following genetically modified organisms are not covered by the Convention:</p> <ul style="list-style-type: none"> <li>i. organisms obtained by mutagenesis on condition that the genetic modification does not involve the use of genetically modified organisms as recipient organisms; and</li> <li>ii. plants obtained by cell fusion (including protoplast fusion) if the resulting plant can also be produced by</li> </ul>

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	<p>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;  The conservation status of a species will be taken as "favorable" when:</p> <ul style="list-style-type: none"> <li>- 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,</li> <li>- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and</li> <li>- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;</li> </ul> <p>5. "<b>waters</b>" mean all waters covered by Directive 2000/60/EC;</p> <p>6. "<b>operator</b>" means any natural or legal, private or public person who operates or</p>		<p>traditional breeding methods and on condition that the genetic modification does not involve the use of genetically modified organisms as parental organisms.</p> <p>"Organism" refers to any biological entity capable of replication or of transferring genetic material.</p> <p>d. "<b>Micro-organism</b>" means any microbiological entity, cellular or non-cellular, capable of replication or of transferring genetic material.</p> <p>e. "<b>Operator</b>" means the person who exercises the control of a dangerous activity.</p> <p>f. "<b>Person</b>" means any individual or partnership or any body governed by public or private law, whether corporate or not, including a State or any of its constituent subdivisions.</p> <p>g. "<b>Damage</b>" means:</p>

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	<p>controls 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 authorization for such an activity or the person registering or notifying such an activity;</p> <p>7. "<b>occupational activity</b>" means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;</p> <p>8. "<b>emission</b>" means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;</p> <p>9. "<b>imminent threat of damage</b>" means a sufficient likelihood that environmental damage will occur in the near future;</p> <p>10. "<b>preventive measures</b>" means any measures taken in response to an event, act or omission that has created an</p>		<p>a. loss of life or personal injury;</p> <p>b. loss of or damage to property other than to the installation itself or property held under the control of the operator, at the site of the dangerous activity;</p> <p>c. loss or damage by impairment of the environment in so far as this is not considered to be damage within the meaning of sub-paragraphs a or b above provided that compensation for impairment of the environment, other than for loss of profit from such impairment, shall be limited to the costs of measures of reinstatement actually</p>

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	<p>imminent threat of environmental damage, with a view to preventing or minimizing that damage;  11. "<b>remedial measures</b>" means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;  12. "<b>natural resource</b>" means protected species and natural habitats, water and land;  13. "<b>services</b>" and "<b>natural resources services</b>" mean the functions performed by a natural resource for the benefit of another natural resource or the public;  14. "<b>baseline condition</b>" means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best</p>		<p>undertaken or to be undertaken;  d. the costs of preventive measures and any loss or damage caused by preventive measures, to the extent that the loss or damage referred to in sub-paragraphs a to c of this paragraph arises out of or results from the hazardous properties of the dangerous substances, genetically modified organisms or micro-organisms or arises or results from waste.  h. "<b>Measures of reinstatement</b>" means any reasonable measures aiming to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. Internal law may indicate who will be entitled to take such measures.  i. "<b>Preventive measures</b>" means any reasonable measures taken by any person, after an incident has occurred to prevent or minimize loss or damage as referred to in paragraph 7, sub-paragraphs a to c of this article.</p>

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	information available; 15. <b>"recovery"</b> , including "natural recovery", means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health; 16. <b>"costs"</b> 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, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.		j. <b>"Environment"</b> includes: i. natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; ii. property which forms part of the cultural heritage; and iii. the characteristic aspects of the landscape. k. <b>"Incident"</b> means any sudden occurrence or continuous occurrence or any series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.
<b>Damage / Environmental</b>	<b>Art. 2 Definitions</b> 1. <b>"environmental damage"</b> means: (a) damage to protected species and natural	<b>Guideline 3: Definitions</b> 2. The term <b>"damage"</b> means: (a) Loss of life or personal injury	<b>Article 2 - Definitions</b> <b>a. "Damage" means:</b> a. loss of life or personal injury;

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<b>damage</b>	habitats, which is any damage that has significant adverse effects on reaching or maintaining the favorable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I; Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorized by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation. (b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative	arising from environmental damage; (b) Loss of or damage to property arising from environmental damage; (c) Pure economic loss; (d) Costs of reinstatement measures, limited to the costs of measures actually taken or to be undertaken; (e) Costs of preventive measures, including any loss or damage caused by such measures; (f) Environmental damage. 3. The term “ <b>environmental damage</b> ” means an adverse or negative effect on the environment that: (a) Is measurable taking into account scientifically established baselines recognized by a public authority that take into account any other human-induced variation and natural variation; (b) Is significant, which is to be determined on the basis of factors such as:	b. loss of or damage to property other than to the installation itself or property held under the control of the operator, at the site of the dangerous activity; c. loss or damage by impairment of the environment in so far as this is not considered to be damage within the meaning of sub-paragraphs a or b above provided that compensation for impairment of the environment, other than for loss of profit from such impairment, shall be limited to the costs of measures of reinstatement actually undertaken or to be undertaken; d. the costs of preventive measures and any loss or damage caused by preventive measures,

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	status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies; (c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms; 2. " <b>damage</b> " means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;	(i) Long-term or permanent change, to be understood as change that may not be redressed through natural recovery within a reasonable period of time; (ii) Extent of the qualitative or quantitative changes that adversely or negatively affect the environment; (iii) Reduction or loss of the ability of the environment to provide goods and services, either of a permanent nature or on a temporary basis; (iv) Extent of any adverse or negative effect or impact on human health; (v) Aesthetic, scientific and recreational value of parks, wilderness areas and other lands.	to the extent that the loss or damage referred to in sub-paragraphs a to c of this paragraph arises out of or results from the hazardous properties of the dangerous substances, genetically modified organisms or micro-organisms or arises or results from waste.
<b>Significant adverse effects</b>	<b>Art. 2(1)(A) Definitions:</b> "is any damage that has significant adverse effects [...] The <b>significance of such effects</b> is to be assessed with reference to the baseline condition,	<b>Guideline 3: Definitions</b> 3. The term " <b>environmental damage</b> " means an adverse or negative effect on the environment that:	<b>Article 2 – Definitions</b> For the purpose of this Convention: a. "Dangerous activity" means one or more of the following activities provided that it is performed professionally, including activities

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	<p>taking account of the criteria set out in Annex I”</p> <p><b>Annex I Criteria Referred to in Article 2(1)(A)</b></p> <p>The significance of any damage that has adverse effects on reaching or maintaining the favorable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data <b>such as:</b></p> <ul style="list-style-type: none"> <li>- the number of individuals, their density or the area covered,</li> <li>- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher</li> </ul>	<p>(b) Is <b>significant</b>, which is to be determined on the basis of factors <b>such as:</b></p> <ul style="list-style-type: none"> <li>(i) Long-term or permanent change, to be understood as change that may not be redressed through natural recovery within a reasonable period of time;</li> <li>(ii) Extent of the qualitative or quantitative changes that adversely or negatively affect the environment;</li> <li>(iii) Reduction or loss of the ability of the environment to provide goods and services, either of a permanent nature or on a temporary basis;</li> <li>(iv) Extent of any adverse or negative effect or impact on human health;</li> <li>(v) Aesthetic, scientific and recreational value of parks, wilderness areas and other lands.</li> </ul> <p><b>Guideline 14: Classification of</b></p>	<p>conducted by public authorities:</p> <ul style="list-style-type: none"> <li>a. the production, culturing, handling, storage, use, destruction, disposal, release or any other operation dealing with one or more: <ul style="list-style-type: none"> <li>• genetically modified organisms which as a result of the properties of the organism, the genetic modification and the conditions under which the operation is exercised, pose a <b>significant risk for man, the environment or property;</b></li> <li>• micro-organisms which as a result of their properties and the conditions under which the operation is exercised pose a</li> </ul> </li> </ul>

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	<p>level including at Community level),  - the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),  - the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.  Damage with a proven effect on human health must be classified as significant damage.</p> <p><b>The following does not have to be classified as significant damage:</b>  - negative variations that are smaller</p>	<p><b>hazardous substances and activities or installations</b></p> <ol style="list-style-type: none"> <li>Domestic law should provide for lists of hazardous substances and their threshold quantities, activities or installations dangerous to the environment, to make apparent the nature and scope of operators' risk of environmental liability and thereby strengthen the insurability of the risk of damage.</li> <li>To enhance their effectiveness, such lists should be exhaustive rather than indicative and give due recognition to domestic priorities, in particular social and economic needs, environmental and public health sensitivities or other special circumstances.</li> </ol>	<p><b>significant risk for man, the environment or property</b>, such as those micro-organisms which are pathogenic or which produce toxins;</p> <ol style="list-style-type: none"> <li>the operation of an installation or site for the incineration, treatment, handling or recycling of waste, such as those installations or sites specified in Annex II, provided that the quantities involved <b>pose a significant risk for man, the environment or property;</b></li> </ol> <p>b. "<b>Dangerous substance</b>" means:</p> <ol style="list-style-type: none"> <li>substances or preparations which have properties which constitute a <b>significant risk for man, the environment or property</b>. A substance or preparation which is ex-plosive, oxidizing, extremely flammable, highly flammable, flammable, very toxic, toxic, harmful, corrosive, irritant, sensitizing, carcinogenic, mutagenic,</li> </ol>

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	<p>than natural fluctuations regarded as normal for the species or habitat in question,  - negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,  - damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.</p>		<p>toxic for reproduction or dangerous for the environment within the meaning of Annex I, Part A to this Convention shall in any event be deemed to constitute such a risk;  b. substances specified in Annex I, Part B to this Convention. Without prejudice to the application of sub-paragraph a above, Annex I, Part B may restrict the specification of dangerous substances to certain quantities or concentrations, certain risks or certain situations.</p> <p><b>Annex I Dangerous Substances</b></p> <p><i>A. Criteria and methods to be applied to categories of dangerous substances (Article 2, paragraph 2, sub-paragraph a)</i></p> <p>The properties referred to in Article 2, paragraph 2, sub-paragraph a, shall be determined by the criteria and methods referred to in or annexed to:</p> <ul style="list-style-type: none"> <li>• the Council Directive of the European Communities 67/548/EEC of 27 June</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>1967 (OJEC No. L196/1) on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labeling of dangerous substances</p> <ul style="list-style-type: none"> <li>• as amended, for the seventh time, in the Council Directive of the European Communities 92/32/EEC of 30 April 1992 (OJEC No. L154/1), and</li> <li>• as adapted to technical progress, for the sixteenth time, by Commission Directive of the European Communities</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>92/37/EEC of 30 April 1992 (OJEC No. L154/30),</p> <ul style="list-style-type: none"> <li>• the Council Directive of the European Communities 88/379/EEC of 7 June 1988 (OJEC No. L187/14) on the approximation of the laws, regulations and administrative provisions of the member States relating to the classification, packaging and labeling of dangerous preparations as adapted to technical progress by the Directive of the Commission of the European Communities 90/492/EEC of 5 October 1990 (OJEC No. L275/35).</li> </ul> <p>B. <i>List of dangerous substances</i> (Article 2, paragraph 2, sub-</p>

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
			paragraph b) The substances referred to in Article 2, paragraph 2, sub-paragraph b, shall be those listed in Annex I of the Council Directive of the European Communities 67/548/EEC of 27 June 1967 (OJEC No. L196/1), on the approximation of the laws regulations and administrative provisions relating to the classification, packaging and labeling of dangerous substances as adapted to technical progress, for the sixteenth time, by Commission Directive of the European Communities 92/37/EEC of 30 April 1992 (OJEC No. L154/30).
<b>Preventive Action / Response Action</b>	<b>Article 5 Preventive action</b> 1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures. 2. 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	<b>Guideline 3: Definitions</b> 2. The term “ <b>damage</b> ” means: (e) Costs of <b>preventive measures</b> , including any loss or damage caused by such measures;  6. The term “ <b>preventive measures</b> ” means any reasonable measures taken by any person in response to an incident, to prevent, minimize or mitigate loss or damage, or to	<b>Article 2 – Definitions</b> a. "Damage" means: d. the costs of <b>preventive measures</b> and any loss or damage caused by preventive measures,  i. " <b>Preventive measures</b> " means any reasonable measures taken by any person, after an incident has occurred to prevent or minimize loss or damage as referred to in paragraph 7, sub-paragraphs a to c of this article.

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>by the operator, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible.</p> <p>3. The competent authority may, at any time:</p> <p>(a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;</p> <p>(b) require the operator to take the necessary preventive measures;</p> <p>(c) give instructions to the operator to be followed on the necessary preventive measures to be taken; or</p> <p>(d) itself take the necessary preventive measures.</p> <p>4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent</p>	<p>undertake environmental clean-up.</p> <p>9. The term “<b>response action</b>” means preventive measures and reinstatement measures.</p> <p><b>Guideline 4: Response action</b></p> <p>1. Should an incident arise during an activity dangerous to the environment, the operator should take prompt and effective response action.</p> <p>2. The operator should promptly notify the competent public authority of the incident and the response action planned or taken and its effectiveness or expected effectiveness.</p> <p>3. The competent public authority should be entitled to obtain from the operator all relevant information related to the incident. It may also order the operator to take specific response action that it deems necessary.</p>	

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
	authority may take these measures itself.	4. If the operator fails to take response action or such action is unlikely to be effective or timely, the competent public authority may take such action itself or authorize a third party to take such action and recover the costs from the operator.	
<b>Remedial/Response Action</b>	<p><b>Article 6 Remedial action</b></p> <p>1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:</p> <p>(a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and</p> <p>(b) the necessary remedial measures, in accordance with Article 7.</p> <p>2. The competent authority may, at any</p>	<p><b>Guideline 4: Response action</b></p> <p>1. Should an incident arise during an activity dangerous to the environment, the operator should take prompt and effective response action.</p> <p>2. The operator should promptly notify the competent public authority of the incident and the response action planned or taken and its effectiveness or expected effectiveness.</p> <p>3. The competent public authority should be entitled to obtain from the operator all relevant information related to the incident. It may also order the operator to take specific</p>	<p><b>Article 2 – Definitions</b></p> <p>h. "<b>Measures of reinstatement</b>" means any reasonable measures aiming to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. Internal law may indicate who will be entitled to take such measures.</p>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>time:</p> <p>(a) require the operator to provide supplementary information on any damage that has occurred;</p> <p>(b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;</p> <p>(c) require the operator to take the necessary remedial measures;</p> <p>(d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or</p> <p>(e) itself take the necessary remedial measures.</p> <p>3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to</p>	<p>response action that it deems necessary.</p> <p>4. If the operator fails to take response action or such action is unlikely to be effective or timely, the competent public authority may take such action itself or authorize a third party to take such action and recover the costs from the operator.</p>	

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.</p> <p><b>Article 7 Determination of remedial measures</b></p> <p>1. Operators shall identify, in accordance with Annex II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under Article 6(2)(e) and (3).</p> <p>2. The competent authority shall decide which remedial measures shall be implemented in accordance with Annex II, and with the cooperation of the relevant operator, as required.</p> <p>3. Where several instances of environmental damage have occurred in such a manner that the competent</p>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.</p> <p>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. Risks to human health shall also be taken into account.</p> <p>4. The competent authority shall invite the persons referred to in Article 12(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and shall take them into account.</p> <p><b>Annex II Remedying of Environmental Damage</b> This Annex sets out a common framework to be followed in order to</p>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>choose the most appropriate measures to ensure the remedying of environmental damage.</p> <p>1. Remediation of damage to water or protected species or natural habitats</p> <p>Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:</p> <p>(a) "Primary" remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;</p> <p>(b) "Complementary" remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;</p>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>(c) "Compensatory" remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;  (d) "interim losses" means losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.  Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.  Remedying of environmental damage, in</p>		

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	<p>terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.</p> <p>1.1. Remediation objectives Purpose of primary remediation</p> <p>1.1.1. The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.</p> <p>Purpose of complementary remediation</p> <p>1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should</p>		

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	<p>be geographically linked to the damaged site, taking into account the interests of the affected population.  Purpose of compensatory remediation  1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.  1.2. Identification of remedial measures  Identification of primary remedial measures  1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.  Identification of complementary and</p>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>compensatory remedial measures  1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.  1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the</p>		

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	<p>extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services. The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).</p> <p>1.3. Choice of the remedial options</p>		

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
	<p>1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:</p> <ul style="list-style-type: none"> <li>- The effect of each option on public health and safety,</li> <li>- The cost of implementing the option,</li> <li>- The likelihood of success of each option,</li> <li>- The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,</li> <li>- The extent to which each option benefits to each component of the natural resource and/or service,</li> <li>- The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,</li> <li>- The length of time it will take for the restoration of the environmental damage to be effective,</li> <li>- The extent to which each option</li> </ul>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>achieves the restoration of site of the environmental damage,  - The geographical linkage to the damaged site.  1.3.2. When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in</p>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>section 1.2.2.  1.3.3. Notwithstanding the rules set out in section 1.3.2. and in accordance with Article 7(3), the competent authority is entitled to decide that no further remedial measures should be taken if:  (a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and  (b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.  2. Remediation of land damage  The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no</p>		

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.</p> <p>If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.</p> <p>If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.</p>		

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
	A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.		
<b>Liability regime / costs</b>	<p><b>Article 8 Prevention and remediation costs</b></p> <p>1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.</p> <p>2. Subject to paragraphs 3 and 4, the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive.</p> <p>However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.</p>	<p><b>Guideline 5: Liability</b></p> <p>1. The operator should be strictly liable for damage caused by activities dangerous to the environment.</p> <p>2. Without prejudice to paragraph 1, any person should be liable for damage caused or contributed to by not complying with applicable statutory or regulatory requirements or through wrongful, intentional, reckless or negligent acts or omissions. A violation of a specific statutory obligation should be considered fault per se.</p>	<p><b>Chapter II – Liability</b></p> <p><b>Article 6 – Liability in respect of substances, organisms and certain waste installations or sites</b></p> <p>c. The operator in respect of a dangerous activity mentioned under Article 2, paragraph 1, subparagraphs a to c shall be liable for the damage caused by the activity as a result of incidents at the time or during the period when he was exercising the control of that activity.</p> <p>d. If an incident consists of a continuous occurrence, all operators successively exercising the control of the dangerous activity during that occurrence shall be jointly and severally liable. However, the operator who proves that the occurrence during the period when he was exercising the control of the dangerous activity caused only a part of the damage shall be liable for that part of the damage only.</p> <p>e. If an incident consists of a series of</p>

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	<p>3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:</p> <p>(a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or</p> <p>(b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.</p> <p>In such cases Member States shall take the appropriate measures to enable the operator to recover the costs incurred.</p> <p>4. The Member States may allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the</p>		<p>occurrences having the same origin, the operators at the time of any such occurrence shall be jointly and severally liable. However, the operator who proves that the occurrence at the time when he was exercising the control of the dangerous activity caused only a part of the damage shall be liable for that part of the damage only.</p> <p>f. If the damage resulting from a dangerous activity becomes known after all such dangerous activity in the installation or on the site has ceased, the last operator of this activity shall be liable for that damage unless he or the person who suffered damage proves that all or part of the damage resulted from an incident which occurred at a time before he became the operator. If it is so proved, the provisions of paragraphs 1 to 3 of this article shall apply.</p> <p>g. Nothing in this Convention shall prejudice any right of recourse of the operator against any third party.</p> <p><b>Article 7 – Liability in respect of sites for the permanent deposit of waste</b></p>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>environmental damage was caused by:</p> <p>(a) an emission or event expressly authorized by, and fully in accordance with the conditions of, an authorization conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;</p> <p>(b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.</p> <p>5. Measures taken by the competent authority in pursuance of Article 5(3) and (4) and Article 6(2) and (3) shall be without prejudice to the liability of the relevant operator under this Directive</p>		<p>h. The operator of a site for the permanent deposit of waste at the time when damage caused by waste deposited at that site becomes known, shall be liable for this damage. Should the damage caused by waste deposited before the closure of such a site become known after that closure, the last operator shall be liable.</p> <p>i. Liability under this article shall apply to the exclusion of any liability of the operator under Article 6, irrespective of the nature of the waste.</p> <p>j. Liability under this article shall apply to the exclusion of any liability of the operator under Article 6 if the same operator conducts another dangerous activity on the site for the permanent deposit of waste.</p> <p>However, if this operator or the person who has suffered damage proves that only a part of the damage was caused by the activity concerning the permanent deposit of waste, this article shall only apply to that part of the damage.</p> <p>k. Nothing in this Convention shall prejudice any right of recourse of the operator against any third party.</p>

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	and without prejudice to Articles 87 and 88 of the Treaty.		
<b>Fault of person who suffered damage</b>			<b>Article 9 – Fault of the person who suffered the damage</b> If the person who suffered the damage or a person for whom he is responsible under internal law, has, by his own fault, contributed to the damage, the compensation may be reduced or disallowed having regard to all the circumstances.
<b>Causality</b>	<b>Article 4 Exceptions</b> 5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.		<b>Article 10 – Causality</b> When considering evidence of the causal link between the incident and the damage or, in the context of a dangerous activity as defined in Article 2, paragraph 1, sub-paragraph d, between the activity and the damage, the court shall take due account of the increased danger of causing such damage inherent in the dangerous activity.
<b>Financial limits</b>		<b>Guideline 10: Financial limits</b> 1. Liability pursuant to guideline 5, paragraph 1, may be limited in	

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		accordance with criteria established under any applicable domestic classification scheme for activities dangerous to the environment. 2. Given that the operator might be unable to meet his or her liability or that actual damages might exceed the operator's limit of liability, domestic law may provide for closure of potential compensation gaps by way of special funding or collective compensation mechanisms. 3. There should be no financial limit on liability arising under guideline 5, paragraph 2.	
<b>Multiple Parties</b>	<b>Article 9 Cost allocation in cases of multiple party causation</b> This Directive is without prejudice to any provisions of national regulations concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a	<b>Guideline 7: Joint and several liability</b> In the event of multiple operators their liability should be joint and several, or apportioned, as appropriate.	<b>Article 11 – Plurality of installations or sites</b> When damage results from incidents which have occurred in several installations or on several sites where dangerous activities are conducted or from dangerous activities under Article 2, paragraph 1, sub-paragraph d, the operators of the installations or sites concerned shall be jointly and severally liable for all such damage.

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	product.		However, the operator who proves that only part of the damage was caused by an incident in the installation or on the site where he conducts the dangerous activity or by a dangerous activity under Article 2, paragraph 1, sub-paragraph d, shall be liable for that part of the damage only.
<b>Access to information</b>			<p><b>Chapter III – Access to information</b></p> <p><b>Article 13 – Definition of public authorities</b> For the purpose of this chapter "public authorities" means any public administration of a Party at national, regional or local level with responsibilities, and possessing information relating to the environment, with the exception of bodies acting in a judicial or legislative capacity.</p> <p><b>Article 14 – Access to information held by public authorities</b></p> <ul style="list-style-type: none"> <li>• Any person shall, at his request and without his having to prove an interest, have access to information relating to the environment held by public authorities.</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>The Parties shall define the practical arrangements under which such information is effectively made available.</p> <ul style="list-style-type: none"> <li>• The right of access may be restricted under internal law where it affects: <ul style="list-style-type: none"> <li>• the confidentiality of the proceedings of public authorities, international relations and national defence;</li> <li>• public security;</li> <li>• matters which are or have been sub judice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;</li> <li>• commercial and industrial confidentiality, including intellectual property;</li> <li>• the confidentiality of personal data and/or files;</li> <li>• material supplied by a third</li> </ul> </li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>party without that party being under a legal obligation to do so; or</p> <ul style="list-style-type: none"> <li>• material, the disclosure of which would make it more likely that the environment to which that material related would be damaged.</li> </ul> <p>Information held by public authorities shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above.</p> <ul style="list-style-type: none"> <li>• A request for information may be refused where it would involve the supply of unfinished documents or data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner.</li> <li>• A public authority shall respond to a person requesting information as soon as possible and at the latest within two months. The</li> </ul>

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			<p>reasons for a refusal to provide the information requested must be given.</p> <ul style="list-style-type: none"> <li>• A person who considers that his request for information has been unreasonably refused or ignored, or has been inadequately answered by a public authority, may seek a judicial or administrative review of the decision, in accordance with the relevant internal legal system.</li> <li>• The Parties may make a charge for supplying the information, but such a charge may not exceed a reasonable cost.</li> </ul> <p><b>Article 15 – Access to information held by bodies with public responsibilities for the environment</b></p> <p>On the same terms and conditions as those set out in Article 14 any person shall have access to information relating to the environment held by bodies with public responsibilities for the</p>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>environment and under the control of a public authority. Access shall be given via the competent public administration or directly by the bodies themselves.</p> <p><b>Article 16 – Access to specific information held by operators</b></p> <ul style="list-style-type: none"> <li>• The person who suffered the damage may, at any time, request the court to order an operator to provide him with specific information, in so far as this is necessary to establish the existence of a claim for compensation under this Convention.</li> <li>• Where, under this Convention, a claim for compensation is made to an operator, whether or not in the framework of judicial proceedings, this operator may request the court to order another operator to provide him with specific information, in so far as this is</li> </ul>

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			<p>necessary to establish the extent of his possible obligation to compensate the person who has suffered the damage, or of his own right to compensation from the other operator.</p> <ul style="list-style-type: none"> <li>• The operator shall be required to provide information under paragraphs 1 and 2 of this article concerning the elements which are available to him and dealing essentially with the particulars of the equipment, the machinery used, the kind and concentration of the dangerous substances or waste as well as the nature of genetically modified organisms or micro-organisms.</li> <li>• These measures shall not affect measures of investigation which may legally be ordered under internal law.</li> <li>• The court may refuse a request which places a disproportionate</li> </ul>

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			<p>burden on the operator, taking into account all the interests involved.</p> <ul style="list-style-type: none"> <li>• In addition to the restrictions under Article 14, paragraph 2 of this Convention, which shall apply mutatis mutandis, the operator may refuse to provide information where such information would incriminate him.</li> <li>• Any reasonable charge shall be paid by the person requesting the information. The operator may require an appropriate guarantee for such payment. However a court, when allowing a claim for compensation, may establish that this charge shall be borne by the operator, except to the extent that the request resulted in unnecessary costs.</li> </ul>
<b>Claims for compensati</b>	<b>Article 3 Scope</b> 3. Without prejudice to relevant national	<b>Guideline 8: Claims for compensation</b>	<b>Article 16 – Access to specific information held by operators</b>

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
<b>on</b>	legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage	<p>1. Any person or group of persons, including public authorities, should be entitled to claim compensation for loss of life or personal injury, loss of or damage to property and pure economic loss in consequence of the occurrence of damage caused by activities dangerous to the environment in addition to, where appropriate, the reimbursement of the costs of preventive measures and reinstatement measures.</p> <p>2. Domestic law may allow claims for compensation for environmental damage.</p>	<ul style="list-style-type: none"> <li>The person who suffered the damage may, at any time, request the court to order an operator to provide him with specific information, in so far as this is necessary to establish the existence of a <b>claim for compensation</b> under this Convention.</li> </ul> <p><b>Article 17 – Limitation periods</b></p> <ul style="list-style-type: none"> <li><b>Actions for compensation</b> under this Convention shall be subject to a limitation period of three years from the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator. The laws of the Parties regulating suspension or interruption of limitation periods shall apply to the limitation period prescribed in this paragraph.</li> <li>However, in no case shall actions be brought after thirty years from the date of the incident which</li> </ul>

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			caused the damage. Where the incident consists of a continuous occurrence the thirty years' period shall run from the end of that occurrence. Where the incident consists of a series of occurrences having the same origin the thirty years' period shall run from the date of the last of such occurrences. In respect of a site for the permanent deposit of waste the thirty years' period shall at the latest run from the date on which the site was closed in accordance with the provisions of internal law.
<b>Access to justice</b>	<b>Article 12 Request for action</b> 1. Natural or legal persons: (a) affected or likely to be affected by environmental damage or (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively, (c) alleging the impairment of a right,	<b>Guideline 9: Other claims</b> 1. Any person or group of persons should be entitled to <b>seek response action by competent public authorities</b> if neither the operator nor the competent public authorities concerned are taking prompt and effective measures to redress	<b>Article 18 – Requests by organizations</b> <ul style="list-style-type: none"> <li>Any association or foundation which according to its statutes aims at the protection of the environment and which complies with any further conditions of internal law of the Party where the request is submitted may, at</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>where administrative procedural law of a Member State requires this as a precondition, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to <b>request the competent authority to take action</b> under this Directive.  What constitutes a "sufficient interest" and "impairment of a right" shall be determined by the Member States. To this end, the interest of any non-governmental organization promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).  2. The request for action shall be</p>	<p>environmental damage, provided that the person or group of persons has a sufficient interest or suffers the impairment of a right if so required by domestic law.  2. Any person or group of persons within the meaning of paragraph 1 above should have the right to challenge in administrative or judicial proceedings the legality of any act or omission by private persons or public authorities that contravenes domestic laws or regulations relating to damage caused by activities dangerous to the environment.  3. Any person or group of persons sustaining damage should be entitled to any information directly relevant to the presentation of a claim for compensation from the operator or the competent public authority in possession of such information, unless such</p>	<p>any time, request:</p> <ol style="list-style-type: none"> <li>a. the prohibition of a dangerous activity which is unlawful and poses a grave threat of damage to the environment;</li> <li>b. that the operator be ordered to take measures to prevent an incident or damage;</li> <li>c. that the operator be ordered to take measures, after an incident, to prevent damage; or</li> <li>d. that the operator be ordered to take measures of reinstatement.</li> </ol> <ul style="list-style-type: none"> <li>• Internal law may stipulate cases where the request is inadmissible.</li> <li>• Internal law may specify the body, whether administrative or judicial, before which the request referred to in paragraph 1 above should be made. In all cases provision shall be made for a right of review.</li> <li>• Before deciding upon a request</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.  3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.  4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.</p>	<p>disclosure is specifically prohibited by law or violates the legally protected interests of third parties.</p>	<p>mentioned under paragraph 1 above the requested body may, in view of the general interests involved, hear the competent public authorities.</p> <ul style="list-style-type: none"> <li>• When the internal law of a Party requires that the association or foundation has its registered seat or the effective centre of its activities in its territory, the Party may declare at any time, by means of a notification addressed to the Secretary General of the Council of Europe, that, on the basis of reciprocity, an association or foundation having its seat or centre of activities in the territory of another Party and complying in that other Party with the other conditions mentioned in paragraph 1 above shall have the right to submit requests in accordance with paragraphs 1 to 3 above. The declaration will</li> </ul>

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	<p>5. Member States may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.</p> <p><b>Article 13 Review procedures</b></p> <p>1. The persons referred to in Article 12(1) 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 under this Directive.</p> <p>2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.</p>		<p>become effective on the first day of the month following the expiration of a period of three months after the date of its reception by the Secretary General</p>
<b>Jurisdiction</b>			<p><b>Article 19 – Jurisdiction</b></p> <ul style="list-style-type: none"> <li>• Actions for compensation under this Convention may only be brought within a Party at the court of the place: <ul style="list-style-type: none"> <li>a. where the damage was</li> </ul> </li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>suffered;</p> <ul style="list-style-type: none"> <li>b. where the dangerous activity was conducted; or</li> <li>c. where the defendant has his habitual residence.</li> </ul> <ul style="list-style-type: none"> <li>• Requests for access to specific information held by operators under Article 16, paragraphs 1 and 2 may only be submitted within a Party at the court of the place: <ul style="list-style-type: none"> <li>a. where the dangerous activity is conducted; or</li> <li>b. where the operator who may be required to provide the information has his habitual residence.</li> </ul> </li> <li>• Requests by organizations under Article 18, paragraph 1, subparagraph a may only be submitted within a Party at the court or, if internal law so provides, at a competent administrative authority of the place where the dangerous</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>activity is or will be conducted.</p> <ul style="list-style-type: none"> <li>• Requests by organizations under Article 18, paragraph 1, subparagraphs b, c and d may only be submitted within a Party at the court or, if internal law so provides, at a competent administrative authority: <ul style="list-style-type: none"> <li>a. of the place where the dangerous activity is or will be conducted; or</li> <li>b. of the place where the measures are to be taken.</li> </ul> </li> </ul> <p><b>Article 20 – Notification</b> The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.</p> <p><b>Article 24 – Other treaties relating to jurisdiction, recognition and enforcement</b></p>

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
			Whenever two or more Parties are bound by a treaty establishing rules of jurisdiction or providing for recognition and enforcement in a Party of decisions given in another Party, the provisions of that treaty shall replace the corresponding provisions of Articles 19 to 23.
<b>Exceptions from liability</b>	<p><b>Article 4 Exceptions</b></p> <p>1. This Directive shall not cover environmental damage or an imminent threat of such damage caused by:</p> <p>(a) an act of armed conflict, hostilities, civil war or insurrection;</p> <p>(b) a natural phenomenon of exceptional, inevitable and irresistible character.</p> <p>2. 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 falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State</p>	<p><b>Guideline 6: Exoneration from liability</b></p> <p>1. Without prejudice to additional exonerations provided for in domestic law, the operator should not be liable, or in the case of (c) below not liable to the degree not apportioned to him or her, if the operator proves that the damage was caused:</p> <p>(a) By an act of God/force majeure (caused by natural phenomena of an exceptional, inevitable and uncontrollable nature);</p> <p>(b) By armed conflict, hostilities, civil war, insurrections or terrorist attacks;</p>	<p><b>Article 8 – Exemptions</b></p> <p>The operator shall not be liable under this Convention for damage which he proves:</p> <ol style="list-style-type: none"> <li>a. was caused by an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;</li> <li>b. was caused by an act done with the intent to cause damage by a third party, despite safety measures appropriate to the type of dangerous activity in question;</li> <li>c. resulted necessarily from compliance with a specific order or compulsory measure of a public authority;</li> <li>d. was caused by pollution at</li> </ol>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>concerned.  3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.  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 activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.</p>	<p>(c) Wholly or in part by an act or omission by a third party, notwithstanding safety measures appropriate to the type of activity concerned but in the case of claims for compensation, only if the damage caused was wholly the result of wrongful intentional conduct of a third party, including the person who suffered the damage;  (d) As a result of compliance with compulsory measures imposed by a competent public authority.  2. In relation to paragraph 4 of guideline 4, exonerations additional to those referenced in subparagraphs 1 (a)–(d) above or mitigating factors may include:  (a) That the activity was expressly authorized and fully in conformity with an authorization given under domestic law, that allows the effect on the environment;</p>	<p>tolerable levels under local relevant circumstances; or  e. was caused by a dangerous activity taken lawfully in the interests of the person who suffered the damage, whereby it was reasonable towards this person to expose him to the risks of the dangerous activity.</p>

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	5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators. 6. This Directive shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.	(b) That the damage was caused by an activity which was not likely to cause damage according to the state of scientific and technical knowledge at the time that the activity was carried out. 3. The operator may be exonerated wholly or in part towards a claimant if the operator proves that the damage resulted from the claimant's act or omission done with intent to cause damage, or that the damage resulted wholly or in part from the claimant's negligence.	
<b>Financial security</b>	<b>Article 14 Financial security</b> 1. Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.	<b>Guideline 11: Financial guarantees</b> 1. The operator should, taking into account the availability of financial guarantees, be encouraged or required to cover liability under guideline 5, paragraph 1, for amounts not less than the minimum specified by law for the type of activity dangerous to the environment concerned and should	<b>Article 12 – Compulsory financial security scheme</b> Each Party shall ensure that where appropriate, taking due account of the risks of the activity, operators conducting a dangerous activity on its territory be required to participate in a financial security scheme or to have and maintain a financial guarantee up to a certain limit, of such type and terms as specified by internal law, to cover the liability under this Convention.

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
	2. The Commission, before 30 April 2010 shall present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report shall also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission shall, if appropriate, submit proposals for a system of harmonized mandatory financial security.	continue to cover such liability, during the period of the time limit of liability, by way of insurance, bonds or other financial guarantees. 2. The competent public authority should periodically review the availability of and the minimum limits for financial guarantees, taking into account the views of relevant stakeholders, including the specialized and general insurance industry.	
<b>Cooperation btw. states</b>	<b>Article 15 Cooperation between Member States</b> 1. Where environmental damage affects or is likely to affect several Member		

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	<p>States, those Member States shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.</p> <p>2. Where environmental damage has occurred, the Member State in whose territory the damage originates shall provide sufficient information to the potentially affected Member States.</p> <p>3. Where a Member State identifies damage within its borders which has not been caused within them it may report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with this Directive, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.</p>		
<b>Claims with</b>	<b>Preambular para. 10</b>	<b>Guideline 13: Claims with foreign</b>	<b>Article 21 – Lis pendens</b>

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
<b>foreign elements</b>	(10) 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(7). This Directive should not apply to activities the main purpose of which is to serve national defence or international security.	<b>elements: applicable law</b> 1. Subject to domestic laws on jurisdiction and in the absence of special rules established by contract or international agreement, any claim for compensation that raises a choice-of-law issue should be decided in accordance with the law of the place in which the damage occurred, unless the claimant chooses to base the claim on the law of the country in which the event giving rise to the damage occurred. 2. The timing of the claimant’s choice pursuant to paragraph 1 should be determined by the law of the forum.	<ul style="list-style-type: none"> <li>• Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Parties, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.</li> <li>• Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favor of that court.</li> </ul> <p><b>Article 22 – Related actions</b></p> <ul style="list-style-type: none"> <li>• Where related actions are brought in the courts of different Parties, any court other than the court first seized may, while the actions are pending at first instance, stay its proceedings.</li> <li>• A court other than the court first seized may also, on the application</li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seized has jurisdiction over both actions.</p> <ul style="list-style-type: none"> <li>• For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.</li> </ul> <p><b>Article 23 – Recognition and enforcement</b></p> <ul style="list-style-type: none"> <li>• Any decision given by a court with jurisdiction in accordance with Article 19 above where it is no longer subject to ordinary forms of review, shall be recognized in any Party, unless: <ul style="list-style-type: none"> <li>a. such recognition is contrary to public policy in the Party in</li> </ul> </li> </ul>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>which recognition is sought;</p> <ul style="list-style-type: none"> <li>b. it was given in default of appearance and the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;</li> <li>c. the decision is irreconcilable with a decision given in a dispute between the same parties in the Party in which recognition is sought; or</li> <li>d. the decision is irreconcilable with an earlier decision given in another State involving the same cause of action and between the same parties, provided that this latter decision fulfils the conditions necessary for its recognition in the Party addressed.</li> </ul> <ul style="list-style-type: none"> <li>• A decision recognized under</li> </ul>

	<b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage	<b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment	<b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
			paragraph 1 above which is enforceable in the Party of origin shall be enforceable in each Party as soon as the formalities required by that Party have been completed. The formalities shall not permit the merits of the case to be re-opened.
<b>Relationship with national law</b>	<p><b>Article 16 Relationship with national law</b></p> <p>1. This Directive shall not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties.</p> <p>2. This Directive shall not prevent Member States from adopting appropriate measures, such as the prohibition of double recovery of costs,</p>		<p><b>Article 25 – Relation between this Convention and other provisions</b></p> <ul style="list-style-type: none"> <li>• Nothing in this Convention shall be construed as limiting or derogating from any of the rights of the persons who have suffered the damage or as limiting the provisions concerning the protection or reinstatement of the environment which may be provided under the laws of any Party or under any other treaty to which it is a Party.</li> <li>• In their mutual relations, Parties which are members of the European Economic Community</li> </ul>

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	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 environmental damage.		shall apply Community rules and shall therefore not apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned.
<b>Temporal application</b>	<b>Article 17 Temporal application</b> This Directive shall not apply to: - damage caused by an emission, event or incident that took place before the date referred to in Article 19(1), - damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article 19(1) when it derives from a specific activity that took place and finished before the said date, - damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.		<b>Article 5 – Transitional provisions</b> a. The provisions of this chapter shall apply to incidents occurring after the entry into force of the Convention in respect of a Party. When the incident consists of a continuous occurrence or a series of occurrences having the same origin and part of these occurrences took place before the entry into force of this Convention, this chapter shall only apply to damage caused by occurrences or part of a continuous occurrence taking place after the entry into force. b. In respect of damage caused by waste deposited at a site for the

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			<p>permanent deposit of waste the provisions of this chapter shall apply to damage which becomes known after the entry into force of the Convention in respect of the Party on the territory of which the site is situated. However this chapter shall not apply if:</p> <ol style="list-style-type: none"> <li>a. the site was closed in accordance with the provisions of internal law before the entry into force of the Convention;</li> <li>b. the operator proves, in the case where the operation of the site continues after that entry into force of the Convention, that the damage was caused solely by waste deposited there before that entry into force.</li> </ol>
<b>Time limits for presentation</b>	<b>Article 10 Limitation period for recovery of costs</b> The competent authority shall be	<b>Guideline 12: Time limits for presentation of claims</b> <b>1. Domestic law should establish</b>	<b>Article 17 – Limitation periods</b> <ul style="list-style-type: none"> <li>• Actions for compensation under this Convention shall be subject to</li> </ul>

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n of claims	entitled to initiate <b>cost recovery proceedings</b> against the operator, or if appropriate, a third party who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive <b>within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.</b>	that claims for compensation are inadmissible unless they are brought within a <b>certain period of time</b> from the date the claimant knew or ought to have known of the damage and the identity of the operator. In addition, claims should be inadmissible unless they are brought within a certain period of time following the occurrence of the damage. 2. Where the damage-causing incident is a series of occurrences having the same origin, the time limits established under the present guideline should run from the last of such occurrences. Where the damage-causing incident consists of a continuous occurrence, such time limits should run from the end of that continuous occurrence.	a <b>limitation period of three years from the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator.</b> The laws of the Parties regulating suspension or interruption of limitation periods shall apply to the limitation period prescribed in this paragraph. <ul style="list-style-type: none"> <li>• However, <b>in no case shall actions be brought after thirty years</b> from the date of the incident which caused the damage. Where the incident consists of a continuous occurrence the thirty years' period shall run from the end of that occurrence. Where the incident consists of a series of occurrences having the same origin the thirty years' period shall run from the date of the last of such occurrences. In respect of a site for the permanent deposit of</li> </ul>

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			waste the thirty years' period shall at the latest run from the date on which the site was closed in accordance with the provisions of internal law.
<b>Competent authority</b>	<p><b>Article 11 Competent authority</b></p> <p>1. Member States shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.</p> <p>2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. To that effect, the competent authority shall be entitled to require the relevant operator to carry out his own assessment and to supply any information and data necessary.</p> <p>3. Member States shall ensure that the competent authority may empower or</p>		

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	require third parties to carry out the necessary preventive or remedial measures. 4. Any decision taken pursuant to this Directive which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time-limits to which such remedies are subject.		
<b>Reports and review</b>	<b>Article 18 Reports and review</b> 1. Member States shall report to the Commission on the experience gained in the application of this Directive by 30 April 2013 at the latest. The reports shall include the information and data set out in Annex VI. 2. On that basis, the Commission shall submit a report to the European Parliament and to the Council before 30		<b>Article 26 – The Standing Committee</b> a. For the purposes of this Convention, a Standing Committee is hereby set up. b. Each Party may be represented on the Standing Committee by one or more delegates. c. Each delegation shall have one vote. However, within the areas of its competence the European

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>April 2014, which shall include any appropriate proposals for amendment.  3. The report, referred to in paragraph 2, shall include a review of:  (a) the application of:  - Article 4(2) and (4) in relation to the exclusion of pollution covered by the international instruments listed in Annexes IV and V from the scope of this Directive, and  - Article 4(3) in relation to the right of an operator to limit his liability in accordance with the international conventions referred to in Article 4(3).  The Commission shall take into account experience gained within the relevant international fora, such as the IMO and Euratom and the relevant international agreements, as well as the extent to which these instruments have entered into force and/or have been implemented by Member States and/or have been modified, taking account of all relevant instances of environmental</p>		<p>Economic Community shall exercise its right to vote in the Standing Committee with a number of votes equal to the number of its member States which are Parties to this Convention. It shall not exercise its right to vote in cases where the member States exercise theirs and conversely. As long as no member State of the European Economic Community is a Party, the Community as a Party shall have one vote.</p> <p>d. Any State referred to in Article 32 or invited to accede to the Convention in accordance with the provisions of Article 33 which is not a Party to this Convention may be represented on the Standing Committee by an observer. If the European Economic Community is not a Party it may be represented on the Standing Committee by an</p>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>damage resulting from such activities and the remedial action taken and the differences between the liability levels in Member States, and considering the relationship between shipowners' liability and oil receivers' contributions, having due regard to any relevant study undertaken by the International Oil Pollution Compensation Funds.</p> <p>b) the application of this Directive to environmental damage caused by genetically modified organisms (GMOs), particularly in the light of experience gained within relevant international fora and Conventions, such as the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, as well as the results of any incidents of environmental damage caused by GMOs;</p> <p>c) the application of this Directive in relation to protected species and natural habitats;</p> <p>d) the instruments that may be eligible for incorporation into Annexes III, IV and</p>		<p>observer.</p> <p>e. Unless, at least one month before the meeting, a Party has informed the Secretary General of its objection, the Standing Committee may invite the following to attend as observers at all its meetings or one or part of a meeting:</p> <ul style="list-style-type: none"> <li>• any State not referred to in paragraph 4 above;</li> <li>• any international or national, governmental or non-governmental body technically qualified in the fields covered by this Convention.</li> </ul> <p>f. The Standing Committee may seek the advice of experts in order to discharge its functions.</p> <p>g. The Standing Committee shall be convened by the Secretary General of the Council of Europe. It shall meet whenever one-third of the Parties or the Committee of</p>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
	<p>V.</p>		<p>Ministers of the Council of Europe so request.</p> <p>h. One-third of the Parties shall constitute a quorum for holding a meeting of the Standing Committee.</p> <p>i. Decisions may only be taken in the Standing Committee if at least one-half of the Parties are present.</p> <p>j. Subject to Articles 27 and 29 to 31 the decisions of the Standing Committee shall be taken by a majority of the members present.</p> <p>k. Subject to the provisions of this Convention the Standing Committee shall draw up its own rules of procedure.</p> <p><b>Article 27 – Functions of the Standing Committee</b>  The Standing Committee shall keep under review problems relating to this Convention. It may, in particular:</p>

	<p><b>Dir. 2004/35/EC</b> on environmental liability with regard to the prevention and remedying of environmental damage</p>	<p><b>2009 UNEP Draft guidelines</b> for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment</p>	<p><b>1993 Lugano Convention</b> on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</p>
			<p>l. consider any question of a general nature referred to it concerning interpretation or implementation of the Convention. The Standing Committee's conclusions concerning implementation of the Convention may take the form of a recommendation; recommendations shall be adopted by a three quarters majority of the votes cast;</p> <p>m. propose any necessary amendments to the Convention including its annexes and examine those proposed in accordance with Articles 29 to 31.</p> <p><b>Article 28 – Reports of the Standing Committee</b>  After each meeting, the Standing Committee shall forward to the Parties and the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.</p>

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