



Environmental Liability

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Introduction

Development of the EU liability regime

European Community efforts to elaborate a Community-wide regime on civil liability for environmental damage go back as far as 1984.¹ Initially these efforts were limited to establishing a liability regime for damage caused by waste, which resulted in the Commission issuing a proposal for a regime for Civil Liability for Damage caused by Waste in 1989 (European Commission, 1989). This proposal was abandoned in 1993 when the Commission refocused its efforts on developing a broader liability regime. The first result of this new focus was a Commission Green Paper on Remedying Environmental Damage (European Commission, 1993), which was published in May 1993. Efforts to establish a broader liability regime were supported by the European Parliament (European Parliament, 1994) and the Economic and Social Committee (Economic and Social Committee, 1994) which both requested ‘a proposal for a Directive on civil liability in respect of (future) environmental damage’. The new efforts at Community level coincided with the signing in June 1993 of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, (‘the Lugano Convention’) and negotiated under the auspices of the Council of Europe.² Although nine countries signed the Convention (Cyprus, Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands and Portugal), the wide scope of this liability regime and the vagueness of its definitions has caused most countries to step back from it, making it unlikely that it will ever be ratified or enter into force.

After the adoption of the Green Paper, it took the Commission almost 7 years to take a next formal step in EU debate on liability. In February 2000 the Commission issued the White Paper on Environmental Liability (European Commission, 2000).³ The adoption of the White Paper was followed by a round of stakeholder consultations. It was initially expected that a Commission Proposal would follow the White Paper soon after the closing of the deadline for the submission of comments. The criticism on the design elements contained in the White Paper and a change of responsible Commission staff however further delayed the adoption of a Proposal for a Directive. In response to industry criticism the Commission decided to further limit the scope of the liability regime. In July 2001 the Commission issued a further Working Paper on Prevention and Restoration of Significant Environmental Damage, which specified and changed some of the options set out in the White Paper (European Commission, 2001). Stakeholders were invited to submit comments by 15 September 2001. In December 2001 a leaked draft proposal for a liability Directive emerged from the Commission, leading to a storm of protests, both from the NGO and industry side. On 23 January 2002 the Commission finally adopted its proposal for a Directive on Environmental Liability with regard to the Prevention and Restoration of

¹ Directive 84/631 on the Supervision and Control within the European Community of the Transfrontier Shipment of Hazardous Waste (European Community, 1984) in its Article 11 requires the Council to take measures for implementing civil liability and take a decision on a system of insurance.

² Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, signed at Lugano in 1993 (Council of Europe, 1993).

³ In the interim, on 17 November 1997, the Commission issued a working paper on environmental liability (European Commission, 1997).

Environmental Damage (the Commission liability proposal)(European Commission, 2002).

Contents of Commission liability proposal

This section sets out the key design principles of the Commission liability proposal as it was issued on 23 January 2002. As we are only at the very beginning of the Community's legislative trajectory, the final design and even the adoption of the Community liability regime are still uncertain and difficult to predict at this point in time.

The Commission liability proposal puts forward a liability regime that is limited in scope. The proposal is limited to a public law regime, allowing only liability claims by public authorities. Persons affected by the damage or public interest groups do not have direct recourse against the polluter, but can request the authorities to hold the polluter liable. When this request is denied, the proposal provides for a possibility of judicial review. The proposal also contains a limited definition of environmental damage, which is restricted to:

- Biodiversity damage, which is defined as damage to natural habitats and species protected under the Habitats and Wild Birds Directives⁴ and areas and species for which areas of protection or conservation have been designated pursuant to Member States' legislation on nature conservation;
- Pollution of water covered by the new Water Framework Directive;⁵ and
- Damage that creates serious potential or actual harm to human health as a result of soil and subsoil contamination.

The proposal excludes liability for historical damage. It proposes strict liability⁶ for damage caused by activities covered under Annex I of the proposal, which lists a range of Directives that regulate the operation of installations, transport and storage of dangerous or polluting goods, the operation of landfill sites, water abstraction and impoundment as well as the use, transport and release of genetically modified organisms. The proposal also establishes liability for biodiversity damage caused by other activities than those listed in its Annex I, but limits this to a fault-based liability.⁷ The proposal furthermore contains a number of important exemptions. It excludes liability for damage caused by actions that were authorized under applicable laws and regulations or by authorizations or permits. It also exempts emissions or activities which were not considered harmful according to the state of scientific and technical knowledge at the time the emission was released or the activity took place.

Interaction with a non-existing institution?

Although the Commission liability proposal has been long anticipated, it was only formally adopted on 23 January 2002. Because of the highly controversial nature of the discussions preceding the adoption of the proposal, there is a good possibility that the proposal may change substantially during its discussion in Council and Parliament, which is likely to take at least two years. Because of the non-transparency

⁴ Directive 79/409 on the conservation of wild birds (European Community, 1979) and Directive 92/43 on the conservation of natural habitats and of wild fauna and flora (European Community, 1992).

⁵ Directive 2000/60 establishing a framework for Community action in the field of water policy (European Community, 2000).

⁶ The defendant is liable even if he could have done nothing to avert the damage.

⁷ The plaintiff must demonstrate that the defendant's actions were wrongful in some way, for example, that he has been negligent.

of the discussions on the proposal thus far and the uncertainty on the final shape of the Community liability regime, the visible interaction with other institutions, both at Community and international level, has been minimal and limited to broader political rather than detailed technical issues. The next section identifies five of these interactions. It is expected that further interactions will become more apparent during the discussion of the Commission proposal and in particular after its adoption. A clearer interaction will be likely to become more apparent with the Community's biodiversity related institutions, in particular the habitats and wild birds Directives (see also the IEEP inventory on the Habitats Directive by Clare Coffey and Karen Shaw) and the Water Framework Directive. Interaction is also likely to become clearer in relation to the Community legislation containing dangerous activities which may give rise to strict liability for damages caused by these activities. At the moment interaction with these institutions is mostly limited to the EU liability regime being the target rather than the source institution. In addition to these clear interactions there may also be a link with the revision of the EU chemicals policy and the elaboration of the EU's Integrated Product Policy (IPP), both of which are still in their early stages of their development.⁸

It is also to be expected that the Commission liability proposal, and, once adopted, the Directive, will have a more visible impact on ongoing international negotiations on various liability regimes. An example of potential future influence is the inclusion of a short description of the state of play of the development of the EU liability regime in the review of existing liability instruments recently drafted by the secretariat of the Convention on Biological Diversity (Biodiversity Secretariat, 2001). The EU liability regime may thus in the short to medium term become an important source of new interactions, but these are still limited at this stage.

Horizontal Interactions (with other EU Legislative Instruments)

1.1 Revised Deliberate Release Directive

Issue: In March 2001 Council and Parliament adopted the revised Genetically Modified Organisms Deliberate Release Directive, replacing the earlier Directive from 1990.⁹ During the negotiations on the text of the Directive, the Environment Committee of the European Parliament, supported by environmental NGOs and a small number of Member States, proposed to include a liability regime for GMOs in the text of the revised Directive (European Parliament, 1999). This was rejected by the Council and by the Commission. This rejection was caused by intensive lobbying by the biotechnology industry and the insistence of the EU Environment Commissioner, Margot Wallström, and Consumer Affairs Commissioner, David Byrne, that environmental liability should be dealt with by a later Directive covering all forms of environmental damage. Although environmental liability for GMOs is covered by the Commission liability proposal, it is only limited in scope since the proposal only establish a public regime, excluding traditional damage to be claimed by private individuals from the scope of the EU liability regime.

⁸ Environmental NGOs are currently pushing for such a link to be established (interview with Simon McRae, FOE UK).

⁹ Directive 2001/18 on the deliberate release into the environment of genetically modified organisms (European Community, 2001)

Cause and policy fields: Both institutions have equal membership. Objectives of the target and source institution differ significantly (establishing a liability regime for environmental damage and regulating the release of GMOs in the EU) and are the major cause of the interaction. As a result of the interaction the Commission decided that liability rules were best concentrated in a liability instrument. Both institutions are identical regulatory instruments (Directives) and adopted on the basis of the same legislative procedure. Although both institutions have strong links with the environmental policy field, the Deliberate Release Directive can be classified as product legislation, which is likely to have contributed to the interaction.

Initial effect: There was a strong preference of some players to limit the liability discussions to one, general, regime, and thereby not further delaying the adoption of the Deliberate Release Directive. The effect of the interaction was that references to liability were dropped in the final Deliberate Release Directive. While initially an intentional synergetic interaction, establishing one comprehensive liability regime rather than multiple institutions with a more limited focus and allowing the swifter adoption of the Deliberate Release Directive, it can now be characterised as disruptive. The reason is that due to the public law nature of the EU environmental liability regime this institution is now likely to exclude from its scope most of the damage for which a liability regime was proposed to be included in the Deliberate Release Directive.

Nature of the influence: The deliberate release Directive is a source by being the reason that liability for GMOs is an issue under the EU environmental liability regime. The environmental liability regime is the source in allowing for the exclusion of liability for GMOs from the deliberate release Directive. The identical membership of both institutions greatly facilitated the ability of both institutions to influence each other by allowing a joint decision on which institution to place the liability rules in. The adoption of the deliberate release Directive was most pressing and imminent. The members of the institutions felt that due to the objective of the liability regime, liability rules were best dealt with under the upcoming environmental liability proposal. This influence was intentional on the part of both the target and the source institution; the influence took place on the output level (adoption of the deliberate release Directive and adoption of the Commission liability proposal).

Responses: The response was a clear case of collective decision making, the membership of both institutions being identical.

Adequacy of responses: This interaction should currently be considered a failure. Arguments for not addressing liability for GMO damage in the Deliberate Release Directive are now no longer valid, as the environmental liability proposal does not cover civil liability. The interaction may however also be classified as successful for the target regime. The inclusion of liability provisions in the Deliberate Release Directive may have significantly delayed the adoption of this instrument, leaving a legislative vacuum. Environmental NGOs are however continuing to put pressure on the Commission to include GMO damage in the Commission's liability proposal. Sufficient pressure may also convince the Commission to fill the liability gap through other proposals.

Sources: Legislative history of the Revised Deliberate Release Directive 2001/18/EC and interviews with Carolina Lasén Diaz (FIELD), Christian Hey (EEB) and Simon McRae (FOE UK).

1.2 Habitat, Wild Birds and Water Framework Directives (as a source)

Issue: The scope of the Commission's liability proposals has been considerably limited since the start of the work on these proposals. Although these proposals started with an initiative on liability for damage caused by waste, the Green Paper on environmental liability proposed a general environmental liability regime. Subsequent proposals have however limited the scope of the regime to public regime, excluding civil liability claims. The current proposal now also limit the coverage of the Directive to strict liability for damage caused by a range of activities regulated under Community environmental law and fault-based liability for biodiversity damage caused by other activities. Importantly, environmental damage is now also defined on the basis of Community environmental protection legislation. The current proposal focuses the scope of the regime to damage to species and habitats covered under the Community's Habitats and Wild Birds Directives, and to water pollution covered by the new Water Framework Directive. Although the recent Commission liability proposal now also covers habitats and species not covered by those Directives but protected under nature conservation legislation in the Member States, it is not clear whether this will remain the case in the final Directive.

Cause and policy fields: The membership, means and institutional features of all institutions are identical. Although all institutions are in the environmental policy field, their objectives are very different. The three source institutions all identify and set protection standards for specific area of the environment. The liability regime, the target institution, aims to assign responsibility for damage to the environment. During the long debate on the establishment of a Community environmental liability regime, the Commission has been under significant pressure to limit the coverage of the regime and define the protected areas of the environment more specifically. In order to do so, the Commission has sought to use definitions of specific parts of the environment and concepts describing the status of aspects of the environment in existing Community legislation.

Initial effect: The target institution, the Commission's liability proposal, needed a clearer definition of 'environment' and the concept of 'damage'. The source institutions defined both specific areas of the environment and included standards of protection for these areas. The target institution has borrowed the source institution's definitional concepts, determining the focus of the liability regime. The effect of this interaction is synergistic in the sense that similar concepts are now likely to be used throughout various pieces of Community legislation. The effect can be called disruptive if one assumes that a Community liability regime should cover a wider range of environmental damage. The effect of the interaction takes place at the output level, the borrowed concepts are explicitly included in the text of the Commission liability proposal.

Nature of the influence: The ability to influence derives from the clarity of the definitional concepts in the source institutions and the need for this clarity in the

target institution. Interaction was not intended by the source institutions. The interaction was intentional by the target institution and took place with its explicit consent.

Responses: This is a case of inter-institutional coordination, the ‘borrowing’ of concepts to increase the clarity and acceptability of the target institution.

Adequacy of responses: The response to the interaction was a direct borrowing of the definitional concepts of the source regimes as a focus for defining the scope of ‘environmental damage’ in the target regime. The response can be seen as adequate, as it delivers this definitional clarity. There is however criticism on the limitation of the scope of the liability regime caused by this borrowing of definitional concepts. Much of the adequacy of the response will depend on whether the final target institution will continue to cover more than the environmental resources covered in the target regimes.

Sources: Liability White Paper, COM(2000) 66 final of 9 February 2000, the Commission’s July 2001 consultation paper (available from the internet at http://europa.eu.int/comm/environment/liability/consultation_en.pdf) and the Commission liability proposal.

1.3 Habitat, Wild Birds and Water Framework Directives (target)

Issue: The Community’s Habitats and Wild Birds Directives, as well as the new Water Framework Directive provide coherent regimes for the identification and protection of habitats and rare species. These instruments however depend on national enforcement practices to achieve their goals. In practice national enforcement is often lacking and incoherent between different Member States. In the wake of a number of recent accidents causing severe environmental pollution,¹⁰ there was an increasing call to strengthen the protection of these areas. The adoption of a Community environmental liability Directive is expected to have both a preventive effect (giving an incentive to polluters to take extra care in view of the financial consequences of pollution) and will help remove the consequences of incidents causing severe pollution by the requirement to restore the polluted areas to their original state.

Cause and policy fields: The membership, means and institutional features of all institutions are identical. Although all institutions are in the environmental policy field, their objectives are very different. The three target institutions identify and set protection standards for specific area of the environment. The liability regime, the source institution, aims to assign responsibility for damage to the environment. The interaction can be explained by the difference in objectives.

Initial effect: The preventive effect and the extra enforcement tool provided by a Community environmental liability regime is likely to support the target institutions in achieving their objectives. The effect of the interaction is likely to take place at the outcome level, the implementation of the target regimes being strengthened by the

¹⁰ Including the Baia Mare and Baia Borse accidents in Romania in January and March 2000, and the collapse of a waste retention dam of the Aznalcollar mining complex on 25 April 1998 in Spain resulting in severe damage to the Doñana National Park.

preventive effect and the extra enforcement tool offered by the source institution. The effect is clearly synergistic.

Nature of the influence: The source institution was created specifically to strengthen the implementation of environmental protection legislation, in particular the source institutions. Its ability to influence will depend on the strength of the environmental liability regime. Interaction was unilateral and not intended by the target institutions. The interaction was one of the key objectives of the source institution and took place with its explicit consent.

Responses: This is a case of inter-institutional coordination, a new institution is created to strengthen the implementation of existing institutions.

Adequacy of responses: It is too early to judge the actual response to this interaction. Since the liability proposal has not yet been adopted or implemented it is not clear whether it will in practice lead to a better implementation of the target institutions. A stronger liability regime is likely to lead to a better implementation of the target institutions and therefore a better response.

Sources: Liability White Paper (European Commission, 2000), and the Commission's July 2001 consultation paper (European Commission, 2001) and the Commission liability proposal.

Vertical Interactions (with International Institutions)

2.1 Lugano Convention

Issue: The Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment was adopted in 1993. The Commission and all EU Member States participated in the negotiations. The Convention contains a regime for environmental liability that covers both traditional damage, such as personal injury and property damage, as well as damage to the environment, but limits liability to dangerous activities as listed in the Convention. The Lugano Convention was initially seen as a robust basis for a Community liability regime. Once the Convention was adopted a number of Member States decided not to ratify, due to its broad coverage of activities and the vagueness of its definitions of in particular environmental damage. The Commission White Paper on environmental liability criticises the Lugano Convention and dismisses it as a basis for an EU-wide environmental liability regime, a conclusion which was later confirmed in the Council of Ministers (on 31 March 2000). The EU institution provided the final nail in the coffin of the Lugano Convention, which is now unlikely to ever enter into force. The EU liability regime is the source institution, the Lugano Convention is the target institution.

Cause and policy fields: While membership of the Council of Europe contains all EU Member States, it also covers a broader range of Central and Eastern European States, many of which are prospective EU members. The difference in membership is one of the important sources of interaction. The EU members of the Lugano Convention collectively decided no longer to ratify this Convention. Without EU members the entry into force of that Convention was no longer possible. The policy field of both institutions is identical. The objectives of both institutions were initially identical,

providing for an environmental liability regime. The EU institution is now more limited, addressing only public law liability, not establishing civil liability. The means of both institutions are different. Community law provides for a stronger regime to enforce the implementation of its rules, which is not guaranteed under an international convention. The institutional features also vary significantly in terms of their institutional features. The EU institution will follow the EU co-decision procedure for its adoption (qualified majority voting and co-decision of the European Parliament), whereas the Lugano Convention was negotiated between sovereign States and its entry into force depends on their ratification.

Initial effect: Doubts on the practicality of the Lugano Convention made states hesitate on its ratification. The elaboration of a new institution, from scratch, within the European Union, led to the explicit renunciation of the Lugano Convention. The effect of this interaction is the unlikely entry into force of the Lugano Convention. The interaction took place on the outcome level; the target institution was adopted but never entered into force. This interaction could be characterized as disruptive. Although a liability regime was available, this was rejected in favour of a new initiative within the EU. Long delays in the adoption of the EU regime have however meant that no environmental liability regime is currently in force.

Nature of the influence: The interaction was initiated by the source institution, through the Commission expressing its preference for not using the Lugano convention as the basis for the EU liability regime. This led to a rejection of the Lugano Convention by the Council of Ministers. The interaction was intentional by the source regime, but could not be prevented by the target regime.

Responses: The support in the Council of Ministers for no longer considering the Lugano Convention and the important overlap in the membership of both institutions have provided an EU-driven abandonment of the Convention. Decision making in the source institution was collective, tacit adaptation by the target institution.

Adequacy of responses: An assessment of the adequacy of responses depends on the assessment of the desirability to have an international liability regime and/or to have the Lugano Convention enter into force. This convention was criticised by all Parties, but would have provided a start to a relatively broad international liability regime, where now, 8 years later, the adoption and form of an EU regime is still uncertain.

The long delays in the elaboration and adoption of an EU liability regime are unlikely to revive the Lugano Convention, although it is still seen and used as an example of an international liability regime and a source of inspiration for other institutions currently being developed.

Sources: Liability White Paper, (European Commission, 2000), and Conclusions of Environment Council 31 March 2000.

2.2 Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal

Issue: The Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 10 December 1999. The liability regime established by this protocol is likely to overlap with an important part of the EU liability regime. During the negotiations the EU negotiators explicitly sought to find ways to allow a stricter EU liability regime to be established at a later date, and exclude damages covered by such a stricter regime from the scope of the Basel Protocol. The EU demands were explicitly accommodated in the Protocol, in particular its Article 3(7)(a).¹¹

Cause and policy fields: Membership from the Basel Protocol, although this has not yet entered into force, is likely to be much wider than the EU, with 148 States being Parties to the Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal (on 7 August 2001) under which the Protocol was negotiated. The interaction was to a large extent caused by the difference in membership. The EU intends to adopt a stricter and wider liability regime than that set out in the Basel Protocol. In order to do so it sought to include to possibility to do this in the text of the Basel Protocol. Both institutions belong to the same policy field. There is also a significant overlap in their objectives, although the EU regime is very likely to become wider than liability for waste alone and likely to be stricter and more detailed. The means of both institutions are different. Community law provides for a stronger regime to enforce the implementation of its rules, which is not guaranteed under an international convention. The institutional features also vary significantly in terms of their institutional features. The EU institution will follow the EU co-decision procedure for its adoption (qualified majority voting and co-decision of the European Parliament), whereas the Basel Protocol was negotiated between sovereign States and its entry into force depends on their ratification.

Initial effect: EU negotiators did not attempt to hold up the development of the Basel Protocol because of the lack of progress on their national environmental liability regime, but instead sought to provide for the accommodation of stricter regional standards under the Basel Protocol. The other Parties participating in the negotiations on the Basel Protocol accepted this. The interaction took place on the output level; the EU wish was explicitly accommodated in the text of the Protocol. This interaction can be characterized as synergetic.

¹¹ Article 3(7)(a) of the Basel Protocol reads as follows:

7. (a) The Protocol shall not apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal pursuant to a bilateral, multilateral or regional agreement or arrangement concluded and notified in accordance with Article 11 of the Convention if:

- (i) The damage occurred in an area under the national jurisdiction of any of the Parties to the agreement or arrangement;
- (ii) There exists a liability and compensation regime, which is in force and is applicable to the damage resulting from such a transboundary movement or disposal provided it fully meets, or exceeds the objective of the Protocol by providing a high level of protection to persons who have suffered damage;
- (iii) The Party to the Article 11 agreement or arrangement in which the damage has occurred has previously notified the Depositary of the non-application of the Protocol to any damage occurring in an area under its national jurisdiction due to an incident resulting from movements or disposals referred to in this subparagraph; and
- (iv) The Parties to the Article 11 agreement or arrangement have not declared that the Protocol shall be applicable.

Nature of the influence: The influence was dependent on consent and a positive decision by the target institution. The influence was intended by the European Union.

Responses: The EU concerns were accepted by other Parties in the negotiating process and accommodated in the text of the target institution, the Basel Protocol. The response took place on the output level in the form of collective decision-making.

Adequacy of responses: This interaction can be characterized as a clear success. Potential future conflict between the rules of the institutions is avoided. The fact that the Basel Protocol only allows stricter regional approaches to derogate from its provision provides a clear ‘floor’ for the EU proposal, requiring it to go further than the regime adopted in the Protocol. Interaction could have been better if the EU had had a liability regime in place itself. It would then have had a stronger position to influence the liability rules in the Basel Protocol.

Sources: Interview with Carla de Vries-Hess, European Commission. Text of the Basel Protocol.

Conclusions and Recommendations

As stated above, due to the immaturity of the EU environmental liability regime, interactions with other regimes are still limited and hard to assess, but it is likely that more visible interactions will start taking place now the Commission has adopted its proposal. Five interactions were mapped out above, the results of which are summarized in Table 1 below.

Two of the interactions mapped in this paper may be classified as having a disruptive effect, the Deliberate Release Directive and the Lugano Convention. The entry into force or expansion of these institutions did not take place because of the functional overlap with the EU environmental liability regime. Instead of addressing the functional issue in various instruments the EU decided to go for the development of a comprehensive institution at EU level. Difficulties in the decision making process at the EU level have, however, significantly postponed the adoption of the EU institution. As a consequence no environmental liability is currently in place, while a number of opportunities to do so, albeit in a less complete manner, were missed. While this appears to indicate an important disruptive effect, this classification depends on the assessment of the two target institutions, views on which differ according to the type of stakeholder. It must also be noted that, in the case of the Lugano Convention, this Convention was already unlikely to enter into force, the EU institution merely provided the ‘final nail in its coffin’. The inclusion of liability provisions in the Deliberate Release Directive could have significantly delayed the adoption of that instrument (although some interest groups may have preferred no Directive when no liability provisions were included).

The second horizontal interaction, with the Wild Birds, Habitats and Water Framework Directives, is a demonstration of a case in which the Community uses pre-existing Community legislation as a way to define the coverage of new initiatives and limiting this coverage to specific types of environmental damage. The third interaction is with the same institutions, where these are the targets rather than the source. This third interaction is not visible now, but is one of the clearly intended

results of the EU liability regime: an improved protection of natural habitats and rare species.

The last observed interaction, with the Basel Protocol, can be seen as much more synergetic, where the willingness to have an internal EU instrument but the uncertainty on the substance of that instrument led to the inclusion of a possibility for Parties to opt out of the Basel Protocol regime when a stronger regional liability regime is in place.

On the basis of this case study inventory, the following cases were selected for further study:

- Interaction between the liability regime and Community legislation on genetically modified organisms: this is likely to be an ongoing debate during the discussion of both the Commission liability proposal and the Community's GMO regime. The Commission proposal included at the last minute liability for GMOs, albeit limited by a general exemption of damage not foreseeable under current scientific knowledge.
- Interaction between the liability regime and Habitats and Wild Birds Directives, as well as the new Water Framework Directive. This interaction will play an important role in the definition of the scope of the liability regime. The strength of the environmental liability regime will also determine the extent to which it will be able to improve the implementation of these nature protection Directives.
- Interaction between the liability regime and the Basel Protocol.

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European Community (1984): Council Directive 84/631/EEC of 6 December 1984 on the Supervision and Control within the European Community of the Transfrontier Shipment of Hazardous Waste, OJ 13.12.84 L326/3. This Directive has now been replaced by Council Regulation 259/93/EEC of 1 February 1993 on the Supervision and Control of Shipments of Waste within, into and out of the European Community.

European Community (1992): Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 22.07.1992 p.7.

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Table 1: Interactions between the EU liability Regime and Other European and International Institutions

Institution	Liability R. Source(S)/ Target (T)	Cause and Policy fields	Initial Effect (+/-)	Nature of the influence	Ability to infl. (S/T)	Response (TA/CD/IIC)	Adequacy of Responses (+/-)	Remarks
<i>Horizontal</i>								
1.1 Revised Deliberate Release Directive	S/T	O	OP -	S/T	S/T	CD/IIC	-	Failure since by recent developments in S
1.2 Habitat, Wild Birds and Water Framework Directives (as source)	T	O	OP +	T	T	IIC	+/-	Link between institutions limits scope of target institution, creates synergy, but limitation of scope may be classified as disruptive.
1.3 Habitat, Wild Birds and Water Framework Directives (as target)	S	O	OC +	S	S	IIC	+?	
<i>Vertical</i>								
2.1 Lugano Convention	S	M	-	S	S	TA (CD)	-	'final nail in coffin'
2.2 Basel Protocol	S	M	+	T/S	T/S	CD/IIC	+	Clear synergy, keeping options open – Basel Protocol will become important source for further development EU institution

S = Source**T** = Target**O** = objectives**M** = membership**OC** = Outcome**OP** = Output

+ = synergy (effect)

- = disruption

TA = tacit adaptation**CD** = collective decision-making**IIC** = inter-institutional co-ordination