

ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE  
CONVENTION ON THE PROTECTION  
AND USE OF TRANSBOUNDARY  
WATERCOURSES AND  
INTERNATIONAL LAKES

CONFERENCE OF THE PARTIES TO  
THE CONVENTION ON THE  
TRANSBOUNDARY EFFECTS OF  
INDUSTRIAL ACCIDENTS

**Intergovernmental Working Group  
on Civil Liability**

First meeting  
Geneva, 21-23 November 2001

Working paper <sup>1</sup>  
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ENGLISH ONLY

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***GESETZ ÜBER DIE UMWELTHAFTUNG<sup>2</sup>***

***GERMAN ENVIRONMENTAL LIABILITY ACT<sup>3</sup>***

Working paper submitted by the Delegation of Germany

**Art. 1 Liability of Installations for Environmental Effects** Should any person be killed or suffer bodily injury or health impairment or should property be damaged as a result of an environmental impact caused by an installation as listed at Appendix 1, the possessor of the installation shall be required to compensate the injured party for the resultant damage.

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<sup>1</sup> This working paper is reproduced in the form as received by the secretariat. Due to late submission, the document is issued as a working paper. It is being distributed to the focal points under both Conventions prior to the meeting, and to the participants at the meeting on 21-23 November 2001.

<sup>2</sup> Bundesgesetzblatt I 1990, 2634

<sup>3</sup> unofficial translation, published in: G. Winter (Edit), German Environmental Law, Dordrecht, Boston, London, 1994

**Art. 2 Liability in Respect of Non-Operational Installations** (1) Where the environmental impact is caused by an uncompleted installation and is due to circumstances pointing towards the hazardous nature of the installation after its completion, the possessor of that uncompleted installation shall be liable under the provisions of Art. 1 above.

(2) Where the environmental impact is caused by an installation which is no longer operational, and is due to circumstances entailing the hazards inherent in the installation before its shut-down, the possessor of the installation at the time of its shut-down shall be liable under the provisions of Art. 1 above.

**Art. 3 Definitions** (1) Damage is caused by an environmental impact if it results from the dissemination, into the soil, air or water, of substances, vibrations, noise, pressure, radiation, gases, fumes, heat or other phenomena.

(2) Installations are stationary facilities such as plants/operational facilities and warehouses.

(3) Installations include

- a) machines, appliances, vehicles, and any other movable technical facilities; and
- b) any other ancillary equipment or facilities which have a spatial or operational connection to the installation or any of its parts and which might be relevant to the causation of environmental effects.

**Art. 4 Exclusion of Liability** No liability shall arise in respect of damage caused by force majeure.

**Art. 5 Limitation of Liability with Respect to Damage to Property** Where the installation has been operated in accordance with its intended purpose (Art. 6, para. (2), 2<sup>nd</sup> sentence), liability to compensate for damage to property shall be excluded if the property has sustained no, or only negligible, impairment or has only been impaired to an extent reasonably to be accepted given the prevailing local conditions.

**Art. 6 Presumption of Causation** (1) Where, in view of the circumstances of the individual case, an installation is found to be capable of having caused the respective damage, it shall be presumed that the damage has been caused by that installation. the capability of an installation to have caused the damage shall, in each individual case, be determined on the

basis of the operational processes, the equipment and facilities used, the type and concentration of materials employed and released, the meteorological conditions, the time and place at which the damage occurred, the nature and extent of the damage caused and all other circumstances which, in the individual case, suggest that the damage either has, or has not, been caused by that installation.

(2) Para. (1) above shall not apply if the installation has been operated in accordance with its intended purpose. This is the case whenever the special operational duties have been complied with and where there has been no disruption of operations.

(3) Special operational duties are duties specified in licences under administrative law, in conditions imposed by competent authorities, in enforceable orders and in legal provisions provided that their purpose is to prevent environmental impacts which might be relevant to the causation of the damage.

(4) Where controls to monitor compliance with any special operational duty are prescribed in the licence, in conditions imposed by public authorities, in enforceable orders or in legal provisions, compliance with such operational duty shall be presumed provided that

1. such controls were carried out within the period in which the environmental effect concerned might have been caused by the installations and these controls have provided no grounds to assume non-compliance with the respective operational duty; or
2. the environmental effect concerned occurred more than ten years before the time of the submission of the claim for damages.

**Art. 7 Exclusion of the Presumption of Causation** (1) Where more than one installation are capable of having caused the damage, the presumption of causation shall not apply if another factor – considering particular facts of the particular case – could have caused the damage. The capability of an installation to have caused the damage shall be determined, in each particular case, on the basis of the time and place of the occurrence, and the nature and extent, of the damage and all other circumstance which, in the particular case, suggest that the damage either has, or has not, been caused by that installation.

(2) Where only one installation was capable of having caused the damage, the presumption of causation shall not apply if any other factor could, in view of the circumstances of each particular case, have caused the damage.

**Art. 8 Injured Party's Right to Information from the Possessor of an Installation** (1) Where there are any facts suggesting that an installation has caused the damage, the injured party can seek information from the possessor of that installation whenever this is necessary to determine the existence of a claim for damages pursuant to this Act. Such requests shall be confined to information on the plant and equipment used, on the type and concentra-

tion of materials employed or released and on other effects emanating from the installation and the special operational duties pursuant to Art. 6, para. (3).

(2) There shall be no right to information as provided under para. (1) above where the related files/Documents are to be treated as confidential pursuant to legal provisions or if confidentiality is in the overriding interest of the possessor of the installation or of a third party.

(3) The injured party may demand that the possessor of the installation provide access to the available documentation where there is reason to assume that incomplete, incorrect or insufficient information has been given, or if the information is not supplied within a reasonable period. Paras. (1) and (2) shall apply *mutatis mutandis*.

(4) Arts. 259 to 261 of the Civil Code shall apply *mutatis mutandis*.

**Art. 9 Injured Party's Right to Information from the Authorities** Where there are any facts suggesting that an installation has caused the damage, the injured party can seek information from those authorities which have approved, or supervise, the installation or which are responsible for recording effects on the environment, insofar as such information is necessary to determine the existence of a claim for damages pursuant to this Act. These authorities shall not be required to provide such information if this would hamper the proper performance of their duties, if disclosure would be prejudicial to the public interest of the Bund (Federation) or any of the Länder (Federal States) or if the pertinent issues are to remain confidential pursuant to statutory provisions or by their very nature, especially on account of the justified interests of the parties concerned or of third parties. Art. 8, para. (1), 2<sup>nd</sup> sentence, shall apply *mutatis mutandis* to authorities having approved or supervising the installation; these authorities may also be requested to furnish details concerning the names and addresses of the proprietor of the installation, of his legal representative or of the person entitled to accept service of documents on behalf of the possessor.

**Art. 10 Right of the Possessor of an Installation to Information** (1) Where a claim pursuant to this Act is submitted against the possessor of an installation, the latter may request the injured party and the possessor of another installation to be informed or to be granted access to documentation or may request information to be supplied by the authorities specified in Art. 9 above, insofar as this is necessary to determine the extent of that proprietor's liability towards the injured party or of his claim to compensation by the possessor of the other installation.

(2) Art. 8, para.(2), para. (3) 1<sup>st</sup> sentence, and para. (4), shall apply *mutates mutandis* to claims against the injured party; Section 8, para. (1) 2<sup>nd</sup> sentence and paras. (2) to (4), to claims against the possessor of another installation; and Art. 9 to the right to information to be supplied by authorities.

**Art. 11 Contributory Fault** Where the fault of the injured party contributed to the causation of the damage, Art. 254 of the Civil Code shall apply. In case of damage to property, the fault of the party in actual control thereof shall be deemed equal to that of the injured party.

**Art. 12 Extent of Liability in Case of Loss of Life** (1) In case of loss of life, compensation is to be made for the costs of an attempted cure and any pecuniary loss entailed for the deceased due to the loss or reduction of his earning capacity during his illness or due to any resultant additional needs. The liable party shall also refund the funeral expenses to the party having to defray such costs.

(2) If at the time of the injury the deceased was, or might have come, under a legal obligation to maintain a third person, and if that third person has lost his right to maintenance as a result of the death of the deceased, the liable party shall compensate such third person to the amount of the maintenance which the deceased would have been obliged to pay during his life expectancy. Such compensation shall also be paid if the third person had been conceived but not yet born at the time of the injury sustained by the deceased.

**Art. 13 Extent of Liability in Case of Bodily Injury** In case of bodily injury or impairment of the health of any person, compensation shall be paid for the costs of the treatment as well as for any pecuniary loss sustained by the injured person on account of the permanent or temporary loss or reduction of his earning capacity as a result of the injury or on account of any consequential additional needs.

**Art. 14 Compensation in the Form of Annuity** (1) Compensation for loss or reduction of the earning capacity of, or for any resultant additional needs entailed for, the injured party as well as any damages payable to a third person under the provisions of Art. 12, para. (2), are in future to be paid in the form of an annuity.

(2) Art. 843, paras. (2) to (4), of the Civil Code shall be applied mutatis mutandis.

**Art. 15 Maximum Amounts of Liability** The party responsible for the damage shall be liable for the death, bodily injury or impairment of the health of any person only up to a total of 160 million DM and similarly, in respect of damage of property, only up to a maximum amount of 160 million DM, provided that the given damage has been caused by one single environmental impact. Where the various damage compensation payments to be made for that one single environmental impact exceed the respective maximum amounts specified in the 1<sup>st</sup> sentence of this Art., the individual compensation payments shall be decreased according to the proportion of their aggregate amount to the specified maximum amount.

**Art. 16 Expenses for Measures to Restore the Previous Condition** (1) Where damage to property at the same time involves any interference with nature or a given landscape, and if the injured party restores the conditions that would exist if that interference had not occurred, Art. 251, para. (2), of the Civil Code shall apply with the proviso that any expenses required for restoration to the previous condition shall not be deemed to be disproportionate merely because they exceed the value of the property.

(2) The party responsible for the damage shall, upon request by the party entitled to compensation, make advance payments for any required expenses.

**Art. 17 Period of Prescription** The limitation periods specified in the Civil Code with regard to torts shall apply *mutatis mutandis*.

**Art. 18 Further Liability** (1) Liability existing under other provisions shall not be affected by this Act.

(2) This Act shall not be applicable in the event of a nuclear incident if the resultant damage is governed by the provisions of the Atomic Energy Act in conjunction with the Paris Convention of July 29, 1960, on Third Party Liability in the Field of Nuclear Energy (as promulgated on July 15, 1985, BGBl II, 1985, p. 963), the Brussels Convention of May 25, 1962, on the Liability of Operators of Nuclear Ships (BGBl II, 1975, p. 957, 977) and the Brussels Convention of December 17, 1971, relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (BGBl II, 1975, p. 957, 1026) in their respective amended versions.

**Art. 19 Security to Cover Liability** (1) The possessors of installations as specified at Appendix 2 shall have to ensure that they will be able to comply with their statutory obligations to compensate for damage which arises from a person being killed or suffering injuries to body or health, or from property being damaged, as a result of an environmental impact caused by the installation (“Security to cover Liability”). Where any special hazard is entailed by an installation which is no longer in operation, the competent authority may order that the possessor of the installation at the time of its shut-down continue to provide adequate insurance or other financial security to cover the pertinent liability for a maximum period of up to ten years.

(2) Such security may be provided

1. Through a third party insurance with an insurance company licensed to operate a business within the area of application of this Act; or
2. by an indemnification guarantee or a warranty undertaking by the Bund or one of the Länder; or

3. by an indemnification guarantee or a warranty undertaking by a credit institution licensed to operate within the area of applicability of this Act if it is ensured that thereby financial security similar to a third-party insurance is provided.

(3) The Categories specified in Art. 2, para. (1), subparas. 1 to 5, of the Act on Compulsory Insurance, in the version promulgated on April 5, 1965, (BGBl. I, p. 213) as amended last on March 22, 1988, (BGBl I, p. 358) are exempted from the obligation to provide financial security.

(4) The competent authority may prohibit either all or part of the operation of an installation as specified at Appendix 2 where the possessor does not comply with his obligation to provide financial security or where proof of such security is not furnished within a reasonable period to be determined by the competent authority.

**Art. 20 Authorisation to issue Ordinances having the Force of Law** (1) The Federal Government, with the consent of the Bundesrat, will enact regulations with regard to:

1. the time from which the possessor of an installation must comply with the obligation to provide financial security pursuant to Art. 19 above;
2. the extent and amount of such financial security;
3. requirements to be imposed with regard to indemnification guarantees and warranty undertakings by credit institutions;
4. the procedures and powers of the authority responsible for the supervision of financial security;
5. the competent authority under Art. 158c, para. 2, of the Insurance Contracts Act; and notification [of non-existence or termination of an insurance contract] as required by the provisions of Art. 158c. para. 2, of the aforementioned Act;
6. the duties of the possessor of the installation, of the insurance company and of any person having provided an indemnification guarantee or a warranty undertaking in respect of the authority responsible for supervising financial security.

(2) The regulation shall be submitted to the Deutsche Bundestag before being referred to the Bundesrat. It may be amended or rejected by a conclusion of the Bundestag. The conclusion shall be forwarded to the Federal Government as it stands. The Bundestag shall deal with that regulation on the basis of a motion filed by as many Bundestag members as are required for the constitution of a parliamentary group.

**Art. 21 Penal Provisions** (1) Any person who

1. contrary to Art. 19, para. (1) 1<sup>st</sup> sentence, in conjunction with an ordinance having the force of law and enacted under Art. 20, para. (1), sub-para. 1 or 2, provides no, or insufficient, financial security; or
2. contravenes an enforceable order issued under the provisions of Art. 19, para. (1), 2<sup>nd</sup> sentence;

shall be punishable by imprisonment not exceeding one year or by a fine.

(2) Where the offender has acted negligently, he shall be punishable by imprisonment not exceeding six months or by a fine up to one hundred and eighty per diem fine rates.

**Art. 22 Provisions on Administrative Fines** (1) An administrative offence<sup>4</sup> is committed by any person who contravenes a regulation having the force of law and enacted under Art. 20, para. (1), sub-paras. 3 to 6, where that regulation refers to these Provisions on Administrative Fines to be applied to specified elements constituting an offence.

(2) For such administrative offence, a fine of up to ten thousand Deutsche Mark may be imposed.

**Art. 23 Transitional Provisions** This Act shall not apply to damage caused before the entry into force of this Act.

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<sup>4</sup> Ordnungswidrigkeit



## **Appendix 1 (pertaining to Art. 1)**

Heat Generation, Mining, Energy (follows list of 18 types of installations)

Stone and Earths, Glass, Ceramics, Building Materials (follows list of 9 types of installations)

Steel, Iron and Other Metals, including Their Processing (follows list of 17 types of installations)

Chemical Products, Pharmaceuticals, Mineral Oil Refining and Further Processing (follows list of 11 types of installations)

Surface Treatment with Organic Substances, Manufacture of Plastic Sheeting, and Other Techniques for Processing Resins and Plastics (6 types of installations)

Wood, Cellulose (2 types of Installations)

Food, Luxury Food/Stimulants, Feedstuffs, Agricultural Products (3 types of installations)

Waste and Residues (22 types of installations)

Miscellaneous (7 types of installations)

## **Appendix 2 (pertaining to Art. 19)**

(1) Installations, for which a safety analysis is to be prepared in accordance with Arts. 1 and 7 of the Accident Regulation.

(2) Installations for the recovery of individual elements from solids by combustion, to the extent that they contain materials according to Appendix 2 of the Accident Regulation during operation according to regulation or the extent that such materials might arise in the event of a disturbance of the operation according to regulation, with the exception of installations for the recovery of precious metals in cross incinerator furnaces, to the extent that the amount of the products does not exceed 200 kg per day.

(3) Installations for the production of additives for varnishes and inks based in cellulose nitrate, with a nitrogen content of up to 12,6 per cent.