

COM-4/031

Brussels, 21 June 2000

OPINION

of

the Committee of the Regions

of 14 June 2000

on the

European Commission White Paper on Environmental Liability

(COM(2000) 66 final)

The Committee of the Regions

HAVING REGARD TO the European Commission White Paper on Environmental Liability (COM (2000) 66 final);

HAVING REGARD TO the decision of the Bureau of 17 November 1999 to draw up, in accordance with the fifth paragraph of Article 265 of the Treaty establishing the European Community, an opinion on the subject, and to instruct the Commission 4 - Spatial Planning, Urban Issues, Energy and Environment - to prepare the Committee's work on the subject;

HAVING REGARD TO the draft opinion (CdR 13/2000 rev. 1) adopted by Commission 4 on 11 May 2000, for which the rapporteur was **Mr McChord** (UK, PES);

adopted the following opinion at its 34th plenary session on 14 and 15 June 2000 (meeting of 14 June) unanimously:

1. Views of the Committee of the Regions

The Committee of the Regions:

1. welcomes this proposal from the European Commission as a first step towards the establishment of an effective European environmental liability regime. This will

provide important protection to key habitats and will make a major contribution to quality of life in the EU;

2. believes that the proposal appears to address one of the main areas outstanding from the Fifth Environmental Action Programme;
3. believes that the proposed European regime should be comprehensive and help to improve implementation of key environmental principles such as the "polluter pays", prevention and precaution of existing European environmental laws;
4. supports the intention of the European Commission to secure the adoption of measures which will ensure the decontamination and restoration of the environment, as well as the better integration of environment into other policy areas. The COR believes that this holistic approach is long overdue and may help to create a level playing field across the Single European Market;
5. welcomes the proposal from the European Commission to ensure that the costs of preventing and restoring environmental damage will be paid by the parties responsible for the damage, rather than being financed by the taxpayer. The Committee is opposed to the view taken in the White Paper that when damage is caused by normal, non-defective operations allowed under the permit issued, part of the compensation should be borne by the permitting authority;
6. welcomes the proposal in the white paper for criteria to be set for dealing with and restoring environmental damage, and for assessing damage to biodiversity. The obligation to spend compensation paid by the polluter on environmental restoration is also welcome, though the details of the enforcement procedures are needed;
7. believes that a European initiative can be justified because of the insufficiency of separate Member State regimes to address all aspects of environmental damage. In this regard the COR notes that the proposal will establish only an EU framework regime which is intended to fix broad overall objectives. However, the Committee thinks that in practical terms the proposed Community framework must involve the local and regional authorities, which often play a key role in safeguarding as well as damaging the environment, leaving the Member States and local and regional authorities to decide on ways and means;
8. notes the "closed" scope of the proposal which builds on existing European environment legislation already dealing with hazardous or potentially hazardous activities. The COR notes that the effect of this proposal, if adopted, would be to only cover contaminated sites and "traditional" damage when caused by hazardous activity subject to European legislation and damage to biodiversity under the Natura 2000 network;
9. welcomes the proposal to extend the access to justice in environmental damage cases. This is in line with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters;
10. notes that the European Commission argues that the overall economic impact of establishing an environmental liability regime at the European level will not amount to the adoption by the EU of a unilateral standard of environmental protection as most OECD countries have already adopted environmental liability legislation of some kind. However, The COR welcomes the proposal of the European Commission to launch further studies on the economic and environmental impact of environmental liability.

The outcome of these studies is awaited with interest;

11. believes that the adoption of a European environmental liability regime is an essential component of the development of the "environmental acquis" prior to enlargement, in order to ensure a level playing field is established across all EU Member States.

2. Recommendations of the Committee of the Regions

The Committee of the Regions:

1. is concerned that the principle of basing the proposal partially on the Natura 2000 network, which remains incomplete, may lead to less concerted action in other parts of the EU. The COR acknowledges that this proposal may lead to further pressure for the Natura 2000 network to be extended in order to secure a wider spatial impact from the EU environmental liability regime;
2. recognises that the Environmental Liability proposal will establish a legislative framework for action, however, the COR calls for the proposed EU environmental liability regime to be strengthened through the integration of the regime into all subsequent EU environmental legislation including proposals emanating the forthcoming Sixth Environmental Action Programme, as well as in any revisions of previous EU environmental legislation;
3. is concerned that the proposal for the coverage of damage is to be based on a cost-benefit analysis which may severely limit the ability of the new regime to act as an incentive function and introduce the changes of behaviour which are sought;
4. is concerned that the new regime will only cover damage to biodiversity where it is assessed to have been "significant", without providing a definition of what "significant" actually is. Damage to biodiversity requires procedures for assessment. The reference to "significant" damage is too limited and implies the establishment of thresholds before action, this may prove to be a weak system that needs an incentive function to ensure that it is taken seriously;
5. argues that how environmental damage is evaluated and the level of burden of proof which is required are critical issues. The concept of "significant damage" and of "cost-benefit analysis" may imply unacceptable thresholds and ceilings for the level of damage to be covered. It is also very unclear from the EC proposal what minimum level of restoration will be required;
6. is concerned that the proposal for there to be no requirement for obligatory insurance which may limit the ability of the new regime to secure changes in behaviour by acting as an incentive function, or requiring where necessary the full restoration of damaged sites;
7. thinks that it is necessary to complement the strict liability proposed with regard to environmental matters by imposing a ceiling on civil liability claims. Appropriate precautions could thus be taken with regard to damage;
8. is concerned that the European Commission is only proposing the establishment of a flexible framework, rather than a comprehensive integrated approach to the problem caused by the current gap in EU legislation in this area;

9. refers the European Commission to the obligation on the EU, as laid down in Article 6 of the Amsterdam Treaty, to ensure that environmental protection requirements are integrated into “the definition and implementation of the Community policies and actions”. The COR believes that this Treaty article clearly establishes the need to ensure that the obligations of the environmental liability regime are addressed across all EU policies. The COR notes with concern that it may be possible under the EC proposal for activities which are not covered by environmental legislation, but which cause environmental damage to escape from the scope of the environmental liability regime;
10. calls for the European Commission to publish its assessment of the environmental benefit of integrating the provisions of the proposed environmental liability regime into other EU policy areas, particularly those of Enterprise, Research and Development, Regional Development and Agriculture;
11. welcomes the fact that the establishment of a European environmental liability regime will accompany the introduction in the Common Agricultural Policy of compulsory Agri-Environment Schemes, which will play a complementary role in protecting the habitats of the European Union;
12. believes that the establishment of an effective European environmental liability regime will help to facilitate candidate countries efforts to adopt the EU environmental acquis and help to ensure the protection of biodiversity, landscape diversity and the environment of Europe as a whole;
13. is concerned at the implications of third parties undertaking the clean-up of local and regional council sites where those bodies own the sites but have failed to act. The EC proposal is unclear as to the level of restoration which will be required and how the costs of the clean-up will be passed onto local and regional governments.
14. Finally, the COR believes that an assessment of the implications of the proposed liability regime for Genetically Modified Organisms is essential, given the public health concerns of consumers and the potential damage to the biodiversity of the European Union.

Brussels, 14 June 2000.

The President

The Acting Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

Jos Chabert

Vincenzo Falcone

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