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** I

SECOND REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the proposal from the Commission to the Council for
a directive on civil liability for damage caused by
waste

(COM(89) 282 final - C3-0154/89 - SYN 217)

Rapporteur : Mr Enrico FERRI

PE 143.353/fin
Or. EN

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

* = Consultation procedure requiring a single reading

**II = Cooperation procedure (second reading) which requires the assent of
Members of Parliament for rejection or amendment

**I = Cooperation procedure (first reading)

*** = Parliamentary assent which requires the assent of
Parliament

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By letter of 3 October 1989, the President of the Council consulted the European Parliament, in accordance with Article 100a EEC Treaty, on the proposal from the Commission to the Council for a directive on civil liability for damage caused by waste (Doc. C3-0154/89, COM(89) 0282 - SYN 217, OJ N° C 251 of 4 October 1989, p. 3).

At the sitting of 13 October 1989, the President of the European Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection for an opinion.

At its meeting of 10 November 1989, the Committee on Legal Affairs and Citizens' Rights appointed Mr Enrico FERRI rapporteur.

At its meeting of 22/23 May 1990, the Committee on Legal Affairs and Citizens' Rights adopted a first report on this Commission proposal (Doc A3 - 0126/90 or PE 139.086/fin), on which Parliament deliberated during the June 1990 part session. At its sitting of 13 June 1990, Parliament, at the request of the rapporteur, decided to postpone the vote on the draft legislative resolution in accordance with Rule 40(2) of the Rules of Procedure.

At its sitting of 10 September 1990, Parliament agreed to the request of the Committee on Legal Affairs and Citizens' Rights that the said report should again be referred back to committee because of a matter of deadlines, pursuant to Rule 103.

At its meetings of 26-28 September 1990 and 30/31 October 1990, the Committee on Legal Affairs and Citizens' Rights examined the Commission's proposal on the basis of a second draft report.

At this latter meeting, the Committee on Legal Affairs and Citizens' Rights adopted the whole of the draft legislative resolution unanimously.

The following took part in the vote: STAUFFENBERG, chairman; ROTHLEY, vice-chairman; FERRI, rapporteur; ALBER, ANASTASSOPOULOS, FALCONER, GARCIA AMIGO, GOLLNISCH, GRUND, JANSSEN VAN RAAY, MALANGRE, MAZZONE, MEDINA ORTEGA, MERZ, SALEMA, SARLIS, VALENT, VERDE and WIJSENBEEK.

The opinion of the Committee on the Environment, Public Health and Consumer Protection is maintained and may be found in the first report (Doc. A3-126/90/Part A).

The report was tabled on 5 November 1990.

The deadline for tabling amendments is fixed for Thursday, 15 November 1990, at noon.

A.

AMENDMENTS

Proposal from the Commission for a Council Directive on
civil liability for damage caused by waste

Commission text¹

Amendments

(Amendment n° 1)
12th recital

Whereas, in order to safeguard the injured party's rights, the holder of waste must be able to identify the producer, on pain of himself being considered the producer;

Whereas, in order to safeguard the injured party's rights, the holder of waste must be able to identify the producer, on pain of himself being considered the producer; whereas the Directive must also cover the liability of the carrier and the eliminator of waste;

(Amendment n° 2)
14th recital

Whereas the protection of persons and the environment requires that the producer's liability should not be reduced by the involvement of other persons having contributed to causing the damage or injury to the environment; whereas, however, the contributory negligence of the injured party may be taken into account to assign, reduce or disallow such liability;

Whereas the protection of persons and the environment requires that a person's liability should not be reduced by the involvement of other persons having recklessly or negligently contributed to causing the damage or impairment of the environment; whereas, however, the intent of the injured party to cause such damage or impairment or contributory negligence on his part may be taken into account to assign, reduce or disallow such liability;

(Amendment n° 3)
17th recital

Whereas to ensure the effective protection of persons and the environment, no contractual derogation should be permitted as regards the liability of the producer in relation to the injured party;

Whereas to ensure the effective protection of persons and the environment, no contractual derogation should be permitted as regards the liability of any person under this Directive in relation to the damage or to the impairment of the environment;

¹ For full text see COM(89) 282 final - OJ n° C 251, 4.10.1989, p. 3

(Amendment n° 4)
18th recital

Whereas market conditions at present are such that it is not opportune to establish a mandatory system of insurance;

Deleted

(Amendment n° 5)
Add new recital (recital 18a)

Whereas, since the Convention on Third Party Liability in the field of Nuclear Energy of 29 July 1960 does not cover impairment of the environment caused by radioactive substances, this Directive shall apply to liability for impairment of the environment caused by radioactive waste;

(Amendment n° 6)
Add new recital (recital 19a)

Whereas the ability to sue the insurers for liability in the event of an action being proven in court after a company has been wound up, liquidated or declared insolvent does not exist in certain Member States;

(Amendment n° 7)
Article 1

Scope of the Directive

Article 1

Article 1

1. This Directive shall concern civil liability for damage and injury to the environment caused by waste generated in the course of an occupational activity, from the moment it arises.

1. This Directive shall complement, where necessary, the laws of the Member States relating to civil liability for damage and for impairment of the environment caused by waste.

Commission Text

2. This Directive shall not apply
- to nuclear waste covered by national law based on the Convention on Third Party Liability in the Field of Nuclear Energy (Paris, 29 July 1960) and the Convention supplementary to the aforementioned Convention (Brussels, 31 July 1963), as well as the Protocols attached to these Conventions;

 - to waste and pollution covered by national law based on the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969) and the International Convention on the Establishment of an International Fund for Compensation for Oil Damage (Brussels, 18 December 1971).

Amendments

2. This Directive shall not apply
- to damage caused by radioactive waste, although impairment of the environment caused by radioactive waste shall remain within the scope of this Directive;

 - to damage and impairment of the environment caused by oil from ships at sea insofar as the question of liability is regulated by the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 as amended by the Protocols of 19 November 1976 and 25 May 1984 and by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971 as amended by the Protocols of 19 November 1976 and 25 May 1984.
3. This Directive shall apply not only to the territories of the Member States but also to the exclusive economic zone over which the Member States enjoy rights and obligations under public international law.

(Amendment n° 8)
Article 2(1)

Definitions

Article 2

Article 2

1. For the purposes of this Directive

1. For the purposes of this Directive:

- a) "producer" means any natural or legal person whose occupational activities produce waste and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste, until the moment when the damage or injury to the environment is caused;
- b) "waste" means any substance or object defined as waste in Article 1 of Council Directive 75/442/EEC;
- c) "damage" means:
- i) damage resulting from death or physical injury;
 - ii) damage to property;
- d) "injury to the environment" means a significant and persistent interference in the environment caused by a modification of the physical, chemical or biological conditions of water, soil and/or air insofar as these are not considered to be damage within the meaning of sub-paragraph c),ii).

- a) "producer" means any person who, in the course of a commercial or industrial activity, produces waste and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;
- b) "waste" means:
- (i) any substance or object defined as such in Council Directive 75/442/EEC; or
 - (ii) radioactive waste, as defined in the Convention on Third Party Liability in the field of Nuclear Energy 29 July 1960, as amended by the Additional Protocols of 28 January and 16 November 1982;
- c) sub-paragraph unchanged
- d) "environment" means the sum of the earth's biotic and abiotic natural resources, such as air, water, soil, flora and fauna or any part thereof;
- e) "impairment of the environment" means any significant physical, chemical or biological deterioration of the environment insofar as this is not considered to be damage within the meaning of sub-paragraph c), ii).

f) "person" means any natural or legal person as defined by public or private law;

g) "eliminator" means a person who carries out any of the operations listed in Annex II A or Annex II B of Council Directive 75/442/EEC.

(Amendment n° 9)
Article 2(2)

2. The following shall be deemed to be the producer of the waste in place of the person defined in paragraph 1(a):

a) the person who imports the waste into the Community, except where the waste was previously exported from the Community and its nature or composition was not substantially changed prior to its reimportation;

b) the person who had actual control of the waste when the incident giving rise to the damage or injury to the environment occurred;

i) if he is not able within a reasonable period to identify the producer as defined in paragraph 1;

ii) if the waste is in transit in the Community without having undergone there a substantial change in nature or composition before the occurrence of the incident giving rise to the damage or injury to the environment;

c) the person responsible for the installation, establishment or undertaking where the waste was lawfully transferred to such installation, establishment or undertaking licensed pursuant to Article 8 of Directive 75/442/EEC, Article 6 of Council Directive 75/439/EEC or Article 9 of Directive 78/319/EEC, or approved pursuant to Article 6 of Council Directive 76/403/EEC.

2. The following shall be deemed to be the producer of the waste in place of the person defined in paragraph 1(a):

a) the person who imports the waste into the Community, except where the waste was previously exported from the Community and its nature or composition was not substantially changed prior to its reimportation;

b) the person who had actual control of the waste when the incident giving rise to the damage or injury to the environment occurred, if he is not able within a reasonable period to identify the producer as defined in paragraph 1(a).

c) Deleted

(Amendment n° 10)
Article 3

Scope of Liability

Article 3

The producer of waste shall be liable under civil law for the damage and injury to the environment caused by the waste, irrespective of fault on his part.

Article 3

1. While the producer or the eliminator has control of the waste, he shall be liable under civil law for the damage and impairment of the environment caused by that waste, irrespective of fault on his part.
2. Waste shall be deemed to remain under the control of the producer or the eliminator, referred to in paragraph 1, until it is subsequently consigned to an eliminator, who is in possession of the permit provided for in Article 9 or Article 10 of Council Directive 75/442/EEC or registered with the competent authorities within the meaning of Article 11 of Council Directive 75/442/EEC.
3. If waste is consigned by a producer or an eliminator to a carrier who is registered or authorized in accordance with Article 12 of Council Directive 75/442/EEC and if the carrier's liability is governed by the provisions of the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels of 10 October 1989, the producer or the eliminator shall only be liable for the cost of any damage or impairment of the environment that exceeds any financial limit applicable under Article 9 of the said Convention.

4. The producer, the carrier and the eliminator shall include in their Annual Reports the names of the Company Insurers for liability purposes.

(Amendment n°11)
Article 4

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| <p><u>1. The plaintiff may take legal action to obtain:</u></p> <p>a) <u>the prohibition or cessation of the act causing the damage or injury to the environment;</u></p> <p>b) <u>the reimbursement of expenditure arising from measures to prevent the damage or injury to the environment;</u></p> <p>c) <u>the reimbursement of expenditure arising from measures to compensate for damage within the meaning of sub-paragraph c) ii) of Article 2(1);</u></p> <p>d) <u>the restoration of the environment to its state immediately prior to the occurrence of injury to the environment or the reimbursement of expenditure incurred in connection with measures taken to this end;</u></p> <p>e) <u>indemnification for the damage.</u></p> | <p><u>1. The national laws of the Member States shall determine:</u></p> <p>a) <u>the person who may bring a legal action in the event of damage or impairment of the environment caused or about to be caused by waste;</u></p> <p>b) <u>the remedies available to such persons which shall include:</u>
<u>(i) an injunction prohibiting the act or correcting the omission that has caused or may cause the damage and/or compensation for the damage suffered;</u>
<u>(ii) an injunction prohibiting the act or correcting the omission that has caused or may cause impairment of the environment;</u>
<u>(iii) an injunction ordering the reinstatement of the environment and/or ordering the execution of preventive measures and the reimbursement of costs lawfully incurred in reinstating the environment and in taking preventive measures (including costs of damage caused by preventive measures);</u></p> <p>c) <u>the burden of proof on the plaintiff, when affirming the causal link between the waste on the one hand and the damage or impairment of the environment suffered or likely to be suffered on the other hand; the burden of proof shall be no higher than the standard burden of proof in civil law;</u></p> |
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2. With regard to the restoration of the environment provided for in paragraph 1 d), the plaintiff, in the case of injury to the environment, may seek such restoration or the reimbursement of expenditure incurred to this end except when:

- the costs substantially exceed the benefit arising for the environment from such restoration, and
- other alternative measures to the restoration of the environment may be undertaken at a substantially lower cost.

In this latter case, the plaintiff may seek the implementation of these other measures or the reimbursement of the expenditure incurred to this end.

3. As regards injury to the environment, the public authorities may take the legal action provided for in paragraph 1 a), b) and d).

4. Where the law in Member States gives common-interest groups the right to bring an action as plaintiff, they may seek only the prohibition or cessation of the act giving rise to the injury to the environment. If, however, they have taken the measures provided for in paragraph 1(b), and (d), they may seek reimbursement of the expenditure resulting from such measures.

d) whether and to what extent damages for loss of profit or economic loss may be recoverable.

2. With regard to reinstatement of the environment provided for in paragraph 1 (b)(iii), the plaintiff may seek such reinstatement or the reimbursement of expenditure incurred to this end except when:

- the costs substantially exceed the benefit arising for the environment from such reinstatement and
- other alternative measures to the reinstatement of the environment may be undertaken at a substantially lower cost.

In this latter case, the plaintiff may seek the implementation of these other measures or the reimbursement of the expenditure incurred to this end.

3. Deleted (but cf. paragraph 1 (a) above).

4. Common interest groups or associations, which have as their object the protection of nature and the environment, shall have the right either to bring legal proceedings to seek any remedy under paragraph 1(b) or to join in legal proceedings that have already been brought. However, in order to avoid a proliferation of litigation, Member States may limit the number of such groups or associations by authorizing, at national, regional or municipal level, only certain groups or associations to exercise the right provided for under this paragraph.

Commission Text

Amendments

5. This Directive shall be without prejudice to national provisions relating to non-material damage.
6. The plaintiff shall be required to prove the damage or injury to the environment, and show the overwhelming probability of the causal relationship between the producer's waste and the damage or, as the case may be, the injury to the environment suffered.

5. Unchanged.
6. Deleted (but cf. paragraph 1 (c) above)

(Amendment n° 12)
Article 5

Where, under this Directive, two or more producers are liable for the same damage or the same injury to the environment, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the right of redress.

1. Where, under this Directive, two or more persons are liable for the same damage or the same impairment of the environment, they shall be liable jointly and severally.
2. Nothing in this Directive shall prejudice the provisions of the national laws of the Member States concerning the right of redress.

(Amendment n° 13)
Article 6(1)

1. The producer shall not be liable under this Directive if he shows that the damage or injury to the environment results from force majeure as defined in Community law.

1. No liability shall attach to any person if he proves that, in the absence of fault on his part:
- a) the damage or impairment of the environment was caused by an act or omission of a third party with the intent to cause such damage or impairment; or
- b) the damage or impairment of the environment resulted from any act of war, hostilities, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character.

(Amendment no. 14)
Article 7

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| <p>1. <u>Without prejudice to the provisions of national law concerning the right of recourse, the liability of the producer shall not be reduced when the damage or injury to the environment is caused both by the waste and by an act or omission of a third party.</u></p> | <p>1. <u>No liability for damage or impairment to the environment caused by waste shall attach to the carrier or the eliminator if he can prove that, in the absence of fault on his part, the consignor of the waste deceived him as to the true character of the consignment of waste which caused such damage or impairment; in such an eventuality, liability shall rest with the consignor.</u></p> |
| <p>2. <u>The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by the waste and the fault of the injured party or of any person for whom the injured party is responsible.</u></p> | <p>2. <u>The liability of any person may be wholly or partially exonerated if he can prove that the damage or impairment of the environment has been caused in whole or in part by the injured party or by any servant or agent of the said party.</u></p> |

(Amendment n°15)
Article 8

The liability of the producer arising from this Directive may not be limited or excluded in relation to the injured person by any contractual provision limiting his liability or exempting him from liability.

The liability of any person arising from this Directive may not be limited or excluded by any contractual provision limiting his liability or exempting him from liability.

(Amendment n° 16)
Article 8a (new)

If the person liable for the damage or impairment of the environment cannot be identified, the State shall take the necessary measures to ensure that such damage or impairment of the environment is repaired.

((Amendment n° 17)
Article 9(1)

Limitation Period

Article 9

Article 9

1. Member States shall provide in their legislation that any legal proceedings under this Directive shall be barred upon expiry of a period of three years from the date on which the party taking legal action under Article 4(1) became aware or should have become aware of the damage or injury to the environment and of the identity of the producer.

1. Member States shall provide in their legislation that any legal proceedings under this Directive shall be barred upon expiry of a period of three years from the date on which the person taking legal action under Article 4(1) became aware or should have become aware of the damage or impairment of the environment.

(Amendment n° 18)
Article 11

Compulsory insurance

Article 11

Article 11

1. The liability under this Directive of the producer, who in the course of a commercial or industrial activity produces waste, and of the eliminator shall be covered by insurance or any other financial security.

2. The Member States may fix a limit on the liability of any person for claims arising from any one incident, which shall be no lower than:

- ECU 70 million for damage
- ECU 50 million for impairment of the environment, which figure shall be increased to ECU 100 million in respect of impairment of the environment caused by radioactive waste.

The Council, acting on a proposal from the Commission, shall determine by 31 December 1992 at the latest the conditions to be applied and the means to be used in order to provide compensation for the damage and injury to the environment covered by this Directive in the event that

- the person liable under this Directive cannot be identified;
- the person liable is incapable of providing full compensation for the damage and/or injury caused.

3. Where sums provided for under one head of compensation, either for damage or for impairment of the environment, are insufficient to meet claims, unused sums under the other head may be set against the unpaid balance.

4. A person may not be entitled to any limitation of liability available under paragraph 2 if it is proved that the damage or impairment of the environment resulted from his personal act or omission on his part or on the part of his servants or agents acting within the scope of their employment, committed with the intent to cause such damage or impairment of the environment or recklessly with the knowledge that such damage or impairment would probably result.

5. The Council, acting on a proposal from the Commission, shall determine by 31 December 1992:

- common rules as to any limitation of liability which may be permitted in the Member States;
- common rules governing the situation arising (i) where the person liable is incapable of providing full compensation for the damage and/or impairment of the environment caused or (ii) where the full liability exceeds the limits set out in paragraph 2 above or (iii) the person liable under this directive cannot be identified; in this regard the Commission shall study the feasibility of the establishment of a 'European Fund for Compensation for Damage and Impairment of the Environment caused by Waste'.

(Amendment n°19)
Article 12

Article 12

This Directive shall not affect:

- a) any rights which may be relied upon by the plaintiff under this Directive under international conventions on civil liability for the carriage of dangerous goods in force at the relevant time;
- b) any rights established by the International Convention on Limitation of Liability for Maritime Claims (London, 19 November 1976).

Final Provisions

Article 12

This Directive shall not affect any rights established by the International Convention on Limitation of Liability for Maritime Claims (London, 19 November 1976).

(Amendment n° 20)
Article 13a (new)

In the event of a company producing or eliminating waste winding up, being liquidated or becoming insolvent, the insurers of that company, in accordance with the Annual Report, shall be held liable for any damages subsequently incurred and proven against the company concerned.

DRAFT LEGISLATIVE RESOLUTION
(COOPERATION PROCEDURE: First reading)

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a directive on civil liability for damage caused by waste

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(89) 282 final - SYN 217)¹,
 - having been consulted by the Council pursuant to Article 100 a of the EEC Treaty (Doc. C3 - 154/89),
 - having regard to the second report of the Committee on Legal Affairs and Citizens' Rights (Doc. A3 - 272/90),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ n° C 251, 4.10.89, p. 3

B.

Explanatory Statement

Introduction

1. At its sitting of 13 June 1990, Parliament adopted all the amendments proposed by the Committee on Legal Affairs and Citizens' Rights with the exception of amendment no. 23 to Article 10 (cf. First Report of the Committee on Legal Affairs and Citizens' Rights Doc A3-126/90) and an amendment, tabled by Mr FALCONER, creating a new Article 13a.

The Commission, having announced its willingness to take over only very few of Parliament's substantive amendments, Parliament decided, at the request of your rapporteur, to postpone the vote on the draft legislative resolution, in accordance with Rule 40(2) of the Rules of Procedure.

2. Over the Summer months, meetings were held with the Commission's services and this draft Second Report is the result of the negotiations, which is now submitted for your approval. The interested reader is referred to the Explanatory Statement to the First Report for more detailed information on the background to this draft directive (Doc A3-126/90/PART B, SYN 217).

Scope of the draft directive

3. The Commission remains firm in its unwillingness to enlarge the scope of the directive to cover certain dangerous activities, as proposed by Parliament, since the Commission did not wish to pre-empt the current work on the preparation of a "Livre vert" on the question of civil liability in the economic sphere.

In a spirit of compromise, your rapporteur proposes therefore not to re-submit the amendments seeking to enlarge the scope of the directive in this way.

4. However, although the Commission still refuses to bring nuclear waste within the scope of this directive, your rapporteur, given the large majority in favour, has nonetheless maintained the amendment to Article 1(2), by which the directive shall apply to impairment of the environment caused by nuclear waste, such impairment not being covered by the Paris Convention on Third Party Liability in the field of Nuclear Energy of 29 June 1960.

Forthcoming directive amending Council Directive 75/442/EEC on waste

5. Since Parliament's vote on 13 June 1990, your rapporteur has learnt that the Council should adopt in the near future a Directive amending substantially Council Directive 75/442/EEC on waste (there is currently a dispute between the Parliament and the Council over the correct legal basis for this amending Directive).

Anticipating the imminent adoption of this amending directive, your rapporteur has altered the definition of "waste" (cf. Art. 2(1)b) and of "eliminator" (cf. Art. 2(1)g); for its definition of "waste", which it is proposed to take over for the purposes of this directive, the amending directive draws heavily on the concept of waste, as laid down in the Basel

Convention. The new proposed definition of waste includes household waste, whose collection, storage, tipping and surveillance would all come within the scope of this directive. This last point was of concern to a number of members.

The Commission's likely position on the amendments proposed herein

6. According to your rapporteur's information, the Commission's likely position on each of the amendments proposed is as follows:

- Amendments nos. 1, 2, 3 and 12 are acceptable;
- On amendment no. 4, the Commission is undecided;
- Amendments nos. 5 (cf. point 4 above), 6 and 20 are not acceptable;
- Amendment no. 7 is acceptable with the exception of paragraph 2, first indent (cf. point 4 above);
- Amendment no. 8 is acceptable with the exception of paragraph 1(b)(ii) (cf. point 4 above); however the Commission has doubts as to the advisability of providing a precedent for a definition of the "environment", no definition having been hitherto laid down in Community law;
- Amendments nos. 9 and 10 are acceptable; amendment no. 10 deals with the carrier's liability. In the Commission's proposal the carrier has no separate liability, the producer being liable for any damage or impairment of the environment caused by the carrier; Parliament, in its vote of 13 June 1990, followed the Committee on Legal Affairs and Citizens' Rights in proposing that the producer of waste should be liable, only while the producer has control of the waste and that, therefore, when waste is consigned to an approved carrier, liability shall also be transferred from the producer to the carrier. In this Second Report, it is proposed in amendment no. 10 that the carrier should have separate liability up to any financial limit that may be fixed by the national legislator under the terms of the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels of 10 October 1989, negotiated under the aegis of the United Nations' Economic Commission for Europe and that the producer should only be liable for any damage or impairment of the environment beyond that financial limit;
- Amendment no. 11 is generally acceptable, although the Commission is undecided about the amendments under Art. 4(1)(c) and (d) and Art. 4(4);
- As for amendment no. 13, the Commission maintains its opposition to Article 6(1)b, the Commission preferring to keep its reference to "force majeure as defined in Community law." In its judgment in Case 266/84 Denkavit v. FORMA (1986 ECR 149), the Court of Justice held that "the concept of force majeure must be understood in the sense of unusual and unforeseeable circumstances, beyond the trader's control, the consequences of which could not have been avoided even if all due care had been exercised." This definition may be applicable to the law governing the payment of monetary compensatory amounts under the common agricultural policy, but is unsuitable as a general definition of force majeure in the field of civil liability. Thus the definition contained in the First Report, which is taken from the classic definition of force majeure in international law, is maintained;
- Amendments nos. 14, 15, 16 and 17 are acceptable;
- As for amendment no. 18, the Commission is undecided as regards paragraph 1, refuses to accept paras 2, 3 and 4, but accepts para. 5, second indent, sub-para (i) and (iii) (para. 5, first indent and second indent, sub-para (ii), being rejected);
- Amendment no. 19 is acceptable.

