

Environment: liability with regard to the prevention and remedying of environmental damage

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The Council debated two key issues central to the proposal for a Directive on environmental liability and the prevention and remedying of environmental damage. The debate provided political guidance for future work on compromises proposed by the Presidency with regard to: - the voluntary or mandatory nature of financial guarantees for environmental risk. The Presidency compromise proposes that a minimum level (yet to be determined) of financial guarantees be made compulsory within five years from entry into force for all operators undertaking activities which are considered the most potentially dangerous, with some flexibility allowing Member States to exempt certain small low-risk operators. The debate on this question showed that a majority of delegations agree that some form of financial security should be made mandatory so as to ensure, in practice, that funds are available to undertake the prevention or remedying action required to achieve the objective of better environmental protection. Some concern was also expressed with regard to the availability and affordability of such financial security; - the question of whether the competent authorities of the Member States should bear the subsidiary responsibility for the prevention or remedying of damage when the polluter cannot be identified or is exempt from liability. The Presidency's compromise proposal provides for a "safety net" to cover any possible loopholes or exemptions of responsibility created by the liability regime established to ensure the prevention and remedying of damage. Whilst placing liability firmly on the operator causing the pollution - in accordance with the "polluter pays" principle - it would also require the competent authority to act when the operator cannot be identified or is for some reason exempt under the Directive. Some flexibility, which may have to be further refined, is provided to allow the authorities to choose not to act in certain instances when the costs are disproportionate to the potential environmental benefit and the damage is not serious. The debate showed that for some delegations such an obligation would be too broad, and that final views on this issue and the nature of the financial guarantee system cannot be fully expressed until the other outstanding issues of the proposal have been given further consideration and a complete package is proposed. Nevertheless, a majority of delegations considered that the proposed compromise constitutes an acceptable basis for further work, and that in order to achieve the maximum environmental benefit, some form of subsidiary liability would have to remain with the Member States.