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Overview of the implementation of the directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage at European level

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Abstract

On 21 April 2004, the European Parliament and the Council of the EU finally succeeded in adopting an Environmental Liability Directive (Directive 2004/35/EC), which has the overall ambitious objective to establish a common European framework of environmental liability for damage to air, water, land, protected species, and natural resources. However, the efficient implementation of this sui generis legal framework regarding prevention and remediation of the environmental damage has been proved really problematic at the European level due to legal discrepancies and technical deficiencies. Eleven years after the adoption of the ELD particular interpretation issues

concerning the determination of the responsible operator, the application of the optional provision of the ELD, the extent of the exceptions, the financial security, and the role of the competent authorities remain unanswered. The aim of this paper is to analyze the barriers to building up a coherent and harmonized liability system without the conceptual fragmentation of the past as well to present comparatively the main procedural and substantive variations among Member States stemming from the national transposition and application of the ELD.

Keywords:

Environmental damage | Environmental liability | Directive 2004/34/EC

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