

21 May 2002

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DEFRA Consultation on EU proposals for a directive on environmental liability

Thank you for your letter of 12 April inviting the association's views on the proposal for an EU directive on environmental liability. We are unable to comment on the majority of the issues raised in that consultation, as they do not fall within our members' expertise. We can, however, respond to question 14, concerning the forms of damage covered by the proposal, in so far as this relates to personal injury.

APIL is concerned that the Commission has decided to exclude personal injury from the scope of the proposed directive. The Commission had originally proposed that an EU environmental liability regime should include personal injury caused by 'dangerous activities'. We recognise that the original proposal raised several difficult questions for resolution, relating to, for example, insurance arrangements, subsidiarity and the definition of 'dangerous activities'. We view this subsequent exclusion, however, as a lost opportunity.

Personal injury claims resulting from 'dangerous activities' are more often than not made against large corporations or multi-national companies. This can cause difficulties for claimants who will be financially disadvantaged in comparison and who will suffer difficulties obtaining the information they need from these companies to establish, for example, causation. The introduction of a system of strict liability for personal injury caused by 'dangerous activities' could have gone some way to addressing these problems.

In addition, the EU's proposal is based on the principle that the polluter should pay for the consequences of his actions, with a view to encouraging prevention. Including personal injury within the scope of the environmental liability regime would help to achieve that aim by requiring the polluter to face all, and not just some, of the consequences of his actions.

We hope that these comments are helpful but please do not hesitate to contact us if you need any further clarification or information.

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