



Convention on Biological Diversity

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**Conference of the Parties to the
Convention on Biological Diversity
Sixteenth meeting**
Cali, Colombia, 21 October–1 November 2024
Item 26 of the provisional agenda*
Liability and redress (Article 14, paragraph 2)

Compilation of information submitted by Parties on recent developments relevant to liability and redress

Note by the Secretariat

In response to the invitation made by the Conference of the Parties in decision 14/21, submissions of information on recent developments were received from the European Union, Germany, Spain, the State of Palestine, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe. The submissions are made available in the language in which they were submitted.

* CBD/COP/16/1.

European Union

The [Environmental Law Directive](#) (hereafter the ‘ELD’) establishes in the EU a framework based on the ‘polluter pays’ principle environmental to prevent and remedy damage. The ELD covers damage to biodiversity understood as species and natural habitats protected under the EU’s respective directives on habitats and birds. Damage to these components of biological diversity ‘is any damage that has significant adverse effects on reaching or maintaining the favorable conservation of such habitats or species’. Further information about the Directive can be found on [ELD dedicated webpage](#).

In March 2021, the European Commission adopted [guidelines](#) that clarify the scope of the term ‘environmental damage’ in the ELD. The guidelines are based on the established [caselaw](#).

The European Commission is carrying out the second evaluation of the Environmental Liability Directive. The report (Staff working document) will be ready in autumn 2024. The report and the supporting study, including the analysis of a number of environmental damage cases will be published on the above mentioned ELD website.

Germany

Specific Relevant Legal Provisions

Act on Nature Conservation and Landscape Management (Federal Nature Conservation Act – BNatSchG) – unofficial translation

Article 13

General principle

Intervening parties shall primarily avoid any significant adverse effects on nature and landscape. Unavoidable significant adverse effects are to be offset via compensation measures (Ausgleichsmaßnahmen) or substitution measures (Ersatzmaßnahmen) or, where such offset is not possible, via monetary substitution.

Article 19

Damages to certain species and natural habitats

(1) Any damage that has significant adverse effects on the achievement or maintenance of the favourable conservation status of habitats or species is damage to such species and natural habitats within the meaning of the Environmental Damage Act (Umweltschadensgesetz). In derogation of Sentence 1, no damage shall be deemed to have occurred in the case of previously determined adverse effects of activities of a responsible person that were approved by the competent authority, or are permissible, pursuant to Articles 34, 35, 45 (7) or Article 67 (2) or, if such review is not required, pursuant to Article 15 or, on the basis of preparation of a binding land-use plan, pursuant to Article 30 or Article 33 of the Federal Building Code.

(2) Species within the meaning of (1) are species that are listed in

1. Article 4 (2) or Annex I of Directive 79/409/EEC or
2. Annexes II and IV of Directive 92/43/EEC.

(3) Natural habitats within the meaning of (1) are

1. habitats of species that are listed in Article 4 (2) or Annex I of Directive 79/409/EEC or in Annex II of Directive 92/43/EEC,
2. natural habitat types of Community interest and
3. breeding and resting sites of species listed in Annex IV of Directive 92/43/EEC.

(4) If a responsible person pursuant to the Environmental Damage Act has caused damage to protected species or natural habitats, that person shall take the necessary remedial measures pursuant to Annex II No 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC L 143, of 30 April 2004, p. 56), amended by Directive 2006/21/EC (OJ EC L 102, of 11 April 2006, p. 15).

(5) The question of whether effects pursuant to (1) are significant shall be determined with regard to the original condition, taking account of the criteria of Annex I of Directive 2004/35/EC. As a rule, significant damage shall not be deemed to have occurred in the case of

1. negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
2. negative variations due to natural causes or resulting from intervention relating to the normal management of the respective areas, as defined in habitat records or documents on conservation targets or as carried on previously by owners or operators,
3. damage to species or habitats for which it is established that they will recover, within a short time and without intervention, in such a way that either the baseline condition is reached, or, solely by virtue of the dynamics of the species or habitat, a condition deemed equivalent or superior to the baseline condition.

Spain

Spain, as Member State of the European Union, transposed the Environmental Liability Directive through Law 26/2007 and its Regulation adopted through Royal Decree 2090/2008, which have been fully implemented and periodically reviewed and updated. This legislation has to be interpreted and applied in conjunction with Law 42/2007 on Natural Heritage and Biodiversity.

More information can be found in the following links:

[Responsabilidad Medioambiental \(miteco.gob.es\)](http://Responsabilidad_Medioambiental_(miteco.gob.es))

Informes sobre la aplicación de la Ley 26/2007, de 23 de octubre, de Responsabilidad Medioambiental

https://www.miteco.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/procedimiento_exigencia_responsabilidad/casos-rma.html

State of Palestine

It is important to note that Palestine has taken the following actions to put liability and redress-related decisions into effect (Article 14, paragraph 2 of the Convention):

1. In its NBSAP, Palestine has evolved and taken into consideration Kunming's (COP 15) recommendations.
2. Palestine has included liability and redress mechanisms in its draft decree law on the environment, which is now being prepared, as part of the development of its legal framework. Sanctions and penalties have also been implemented to guarantee culpability and redress systems.
3. A framework for environmental liability based on the triple (Ps) "polluter pays principle" has been established by Palestine through the adaptation and implementation of the European Environmental Liability Directive (ELD).
4. Regarding the Biodiversity Damage Assessment, certain research conducted in Palestine by different stakeholders.

United Kingdom of Great Britain and Northern Ireland

The United Kingdom of Great Britain and Northern Ireland (UK) notes that the issue of liability and redress for damage to the environment and to biological diversity in relation to Article 14, paragraph 2 of the Convention, has been considered by the Parties on an ad-hoc basis. We note, in particular: the 2005 report from the Group of Legal and Technical Experts on Liability and Redress, in which it is recorded that the group had concluded that it was premature to decide on the appropriateness of a liability regime under the Convention; the follow-up synthesis report from the Executive Secretary that considered the elements and further work needed for discussions on a regime under the Convention; the agreement of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress under the Cartagena Protocol; and the subsequent guidance and tools on ecosystem restoration. The issue was last discussed by Parties at COP14 in 2018.

The UK notes that some domestic and international developments might have relevance to the Convention's consideration of liability and redress. The issue of liability and redress for damage to biodiversity remains contentious at the international level, and the UK believes that several elements of the issue require in-depth, co-ordinated discussion across multiple forums.

UK developments

The UK has taken significant steps to avoid damage to the environment and biodiversity and to restore and protect the environment for future generations.

For instance, the Environment Act 2021 sets a legal framework for environmental protection and governance at the national level. The Act sets long-term targets to improve air quality, biodiversity, water, and waste reduction, and on resource efficiency. Of most relevance to the issue of liability and redress under the Convention, the Act sets out that a Minister of the Crown must, when making policy, have due regard to five environmental principles. These environmental principles include the principle of preventative action to avert environmental damage; the principle that environmental damage should as a priority be rectified at source; and the polluter pays principle. This legislation ensures that any new UK policy seeks to avoid environmental damage from the outset.

The Act also sets out that developers must deliver a net gain to biodiversity of 10%, meaning that development will result in more or better-quality natural habitat. This policy, known as Biodiversity Net Gain (BNG), is mandatory in England. The introduction of this legislation has meant that policy progress has been made in measuring biodiversity, measuring biodiversity value (for which a metric has been developed), avoiding loss of biodiversity and restoring or creating habitat to make up for projected damage. Extensive guidance has been produced on the policy, and we will see more progress as the policy is implemented further.

The Act also created the Office for Environmental Protection with a duty to monitor the implementation of environmental law, with powers to hold the government and other public authorities to account.

International Progress

The UK notes there has been significant progress on the issue of liability and redress for transboundary issues relating to the environment in multiple international fora. It may be useful for Parties to the CBD to be provided any relevant updates on the following processes:

- Loss and Damage associated with climate change impact under the UNFCCC, and the work of the Warsaw International Mechanism.
- Any updates from the Montevideo Environmental Law Programme, including the Second Meeting of National Focal Points held 3-5 June 2024 which discussed priority areas for implementation, including clearly defined priority areas to combat the biodiversity crisis, as well as emerging issues in environmental law.

- Any progress and cooperation on transboundary issues and resources, particularly land degradation and drought management, under the UNCCD.
- Any updates, progress or relevant information related to transboundary air pollution, industrial accidents and transboundary waters under the UNECE Convention.
- Any updates, progress or relevant information related to the environment in the transboundary context from other related conventions and agreements such as pollution from ships (MARPOL), pollution by oil (OILPOL), transboundary movement of hazardous wastes (Basel Convention), chemicals, pesticides and other pollutants (Rotterdam and Stockholm Conventions).
- Any updates, progress or relevant information associated with UNEA and UNGA resolutions and processes.

Preferred next steps

The UK notes and thanks the Executive Secretary for the work done to date on this issue. However, the UK also notes that significant and relevant progress has been made across multiple forums in recent years, which will need to be considered by Parties in any discussion of this issue to avoid or at least manage the possibility of any overlap or duplication. Given the short time available to the Secretariat and Parties, and other resource constraints, we would not recommend prioritising this consideration now.

Zimbabwe

The National Biotechnology Authority (NBA) is the National Focal Point for the Cartagena Protocol on Biosafety in Zimbabwe. The Government of Zimbabwe is yet to accede to the Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress. However, several liability and redress principles are provided for in the NBA Act [Chap.14.31] of 2006.

The NBA Act has provisions that require all users of products of biotechnology to take appropriate measures to prevent or minimise any foreseeable danger to persons, animals or plants or to the environment that may arise from the use of these products. In addition, in the case of accidents users of products of biotechnology should furnish the NBA with information necessary to assess the impact of the accident on the environment including the emergency measures taken or needed to be taken to avoid or mitigate any adverse impact of such accident on the environment.

To date, there have been no reported cases that have required any restoration or compensation procedures to be effected.