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# **Environmental Liability and Ecological Damage in European Law**

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*Edited by*

Monika Hinteregger



E2009003689



**CAMBRIDGE**  
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press,  
New York

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521889971](http://www.cambridge.org/9780521889971)

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First published 2008

Printed in the United Kingdom at the University Press, Cambridge

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloging-in-Publication Data*

Environmental liability and ecological damage in European law / edited by  
Monika Hinteregger.

p. cm. – (The common core of European private law)

Includes bibliographical references.

ISBN 978-0-521-88997-1

1. Liability for environmental damages – Europe. I. Gimpel-Hinteregger,  
Monika. II. Title. III. Series.

KJC1715.E58 2008

344.404'6–dc22

2008018937

ISBN 978-0-521-88997-1 hardback

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## **Environmental Liability and Ecological Damage in European Law**

Providing a comprehensive analysis of environmental liability law in Europe, this book offers a general introduction to the status of environmental liability in Europe. It describes the relevant international treaties and the EC Environmental Liability Directive and discusses the conflict of laws issues regarding transfrontier environmental damage. It also contains the results of a comparative project covering fourteen jurisdictions in thirteen European countries (Austria, Belgium, England, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal, Scotland, Spain and Sweden) on the private law aspects of environmental liability. It addresses the main problems of the application of tort law in environmental law, such as the availability of no-fault liability, the establishment of causation, the scope of available remedies and the issue of legal standing. Due to the very limited harmonizing effect of the EC Environmental Liability Directive national tort law will keep its importance in the field of environmental liability.

MONIKA HINTEREGGER is a Professor of Civil Law at the Institute of Civil Law, Foreign and Private International Law, Karl Franzens University of Graz. Her teaching covers topics of European Private Law and Austrian Civil Law. For the past fifteen years she has been a legal advisor to the Austrian Government and Parliament on several topics of tort law.

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For the transnational lawyer the present European situation is equivalent to that of a traveller compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality *The Common Core of European Private Law Project* was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger.

The aim of this collective scholarly enterprise is to unearth what is already common to the legal systems of European Union member states. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.

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# Preface

The notion of environmental damage is a rather recent development in tort law on both a national and an international level. Constant degradation of environmental goods, such as air, water and wildlife, by emissions and old dumpsites and spectacular industrial accidents causing pollution created a new awareness by the public of the environment. National legislation and new international treaties show that tort liability is attributed an increasing role in the protection of the environment by decision-makers. The most recent example is EC Directive 2004/35/EC on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage (OJ L 143, p. 56, 30 April 2004). The Directive, however, provides for a rather narrow concept of environmental liability. Although Member States are not prevented from maintaining or enacting more stringent provisions, it must be expected that the Directive will only provide for limited harmonisation of Member State laws with regard to the prevention and remediation of environmental damage. National tort law will therefore continue to play a major part in the field of environmental liability.

This book provides an analysis of how private law regimes in Europe cope with the problem of damage to the environment. In Part I, there are general introductions to the status of environmental liability in Europe and conflict of laws issues regarding transfrontier environmental damage.

Part II of the book contains the comparative project covering fourteen jurisdictions in thirteen European countries. It concentrates on the private law aspects of environmental liability. Thus, the main problems of the application of tort law in the field of environmental law – such as the availability of no-fault liability, the establishment of causation, the scope of available remedies and the crucial issue of legal standing – are addressed.

The 'Environmental liability and ecological damage in European Law' project was launched in July 2000 at the general meeting of the Common Core project in Trento, where a first draft questionnaire, developed by the editor of this book, was discussed by several scholars of the environmental group of the Trento project. Already at that meeting, the first participants in the project joined in, and, in 2001, again at the general meeting of the Common Core project, the questionnaire was finalised and presented to the members of the tort group of the Common Core project (chaired by Professor Mathias Reimann, University of Michigan Law School), who were very supportive of the idea to engage in a comparative study on environmental liability law. The following years were spent recruiting legal experts from those states that were not yet covered and preparing the responses, which were discussed during several meetings of the project team.

By including fourteen reports from thirteen countries (Austria, Belgium, England, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Scotland, Spain and Sweden), the rather ambitious plan to cover all the (then) fifteen Member States of the European Union was nearly achieved. It was, however, not possible to expand the scope of the project when the enlargement of the European Union to twenty-five Member States took place on 1 May 2004, as the project was already in a very advanced stage at that time. The same applies for the accession of Bulgaria and Romania on 1 January 2007. The challenging and extremely interesting endeavour of a comparative analysis of the environmental liability laws of these jurisdictions must therefore be left to a follow-up project.



# Acknowledgments

The editor of and the contributors to this volume wish to thank all those who have made this book possible. First of all, thanks to Ugo Mattei and Mauro Bussani, the general editors of the Common Core project, for including this volume in the Common Core of European Private Law series, and to Franz Werro, the new chairman of the tort group of the Trento project, for reviewing the first draft of the volume and for his helpful comments and suggestions. We are very indebted to all those who so efficiently organised the numerous meetings in Trento during which the project was developed, discussed and finalised, namely, Mrs Carla Boninsegna and her team. Many thanks also go to Cambridge University Press for accepting the volume for publication and all those at Cambridge University Press who helped in the publishing process.

During the long process of writing this book, many persons have helped to bring this project to fruition. I thank Manuela Weissenbacher, Elke Buchwalder and Georg Aichinger for the assistance they have provided throughout the preparation of the project, Monika Lammer for the technical preparation of the manuscript and Rachel Tripp for her help with linguistic matters.

Monika Hinteregger, Graz, 2008

## General editors' preface

This is the eighth book in the Common Core of European Private Law series published within Cambridge Studies in International and Comparative Law. The project was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger.

The methodology used in the Trento project is novel. By making use of case studies it goes beyond mere description to detailed inquiry into how most European Union legal systems resolve specific legal questions in practice, and provides a thorough comparison between those systems. It is our hope that these volumes will provide scholars with a valuable tool for research in comparative law and in their own national legal systems. The collection of materials that the Common Core project is offering to the scholarly community is already quite extensive and will become even more so when more volumes are published. The availability of materials attempting a genuine analysis of how things are is, in our opinion, a prerequisite for an intelligent and critical discussion on how they should be. Perhaps in the future European private law will be authoritatively restated or even codified. The analytical work carried on today by the almost 200 scholars involved in the Common Core project is also a precious asset of knowledge and legitimisation for any such normative enterprise.

We must thank the editors of and contributors to these first published results. With a sense of deep gratitude we also wish to recall our late Honorary Editor, Professor Rudolf B. Schlesinger. We are sad that we have not been able to present him with the results of a project in which he believed so firmly.

No scholarly project can survive without committed sponsors. The Italian Ministry of Scientific Research is funding the project, having recognised it as a 'research of national interest'. The International

University College of Turin with the Compagnia di San Paolo and the Consiglio Nazionale del Notariato allow us to organise the general meetings. The European Commission has partially sponsored some of our past general meetings, having included them in their High Level Conferences Program. The University of Turin, the University of Trieste, the Fromm Chair in International and Comparative Law at the University of California and the Hastings College of Law, and the Centro Studi di Diritto Comparato of Trieste, have all contributed to the funding of this project. Last but not least, we must thank all those involved in our ongoing projects in contract law, property, tort and other areas, whose results will be the subject of future published volumes.

Our home page on the internet is at <http://www.iuctorino.it>. There you can follow our progress in mapping the common core of European private law.

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