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**EX POST REGULATION:
LIABILITY OF THE FIRMS**

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“Regulation and tort law are alternative methods (though often used in combination) for preventing accidents.

The former requires a potential injurer to take measures to prevent the accident from occurring.

The latter seeks to deter the accident by making the potential injurer liable for the costs of accident should it occur”
(Landes and Posner, 1984)

This introduces the concept of tort law/liability (ex post regulation) as a complementary/substitute device of ex ante regulation.

EAL APPROACH TO EX POST REGULATION

- Economic Analysis of Law approach: internalization of environmental damage due to third parties
- ex post regulation:
- Repayment to the victims and decontamination of sites
- ex ante regulation:
- Incentive to preventive measures
- A liability system is efficient if we have a perfect internalization of damage and moreover firms are incentivated to adopt the best technology with the best preventive measures (ex ante effects).

THE U.S. LIABILITY SYSTEM

- The experience of the US with environmental issues provides an excellent example in several respects. The issue of environmental liability in that country, in fact, fully emerged in the 1980's, when several environmental-pollution cases were recorded and, at the same time, an increased number of small enterprises entered risky sectors.
- In 1980 the Congress accordingly issued the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and a whole range of amendments in the following years, in order to cope with the decontamination” of the sites subject to environmental risks by charging the reimbursement of the clean-up costs to the liable parties and by creating a public fund, the Superfund.
- The liable parties were considered to include the owners and the operators of the affected sites, as well as the current owners and operators, the generators of dangerous polluting materials stored on those sites, and the carriers of such materials. All these parties are retroactively, objectively, and jointly liable, therefore each may be held responsible for the whole amount of the damage.

THE BUILDING OF AN EUROPEAN ENVIRONMENTAL POLICY

- 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.
- The Directive establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage.
- Under the terms of the Directive, environmental damage is defined as:
 - direct or indirect damage to the aquatic environment covered by Community water management legislation;
 - direct or indirect damage to species and natural habitats protected at Community level by the 1979 " Birds " Directive or by the 1992 " Habitats " Directive;
 - direct or indirect contamination of the land which creates a significant risk to human health.
- The principle of liability applies to environmental damage and imminent threat of damage resulting from occupational activities, where it is possible to establish a causal link between the damage and the activity in question.

EX POST REGULATION SCHEME

- **FIRST:** INJURER/POLLUTER – FIRMS/INDUSTRY
- **SECOND:** CAUSALITY
- **THIRD:** EVENT (probability and damage)
- **FOURTH:** DAMAGE EVALUATION
- **FIFTH:** EFFECTS AND TIMING
- **SIXTH:** VICTIMS (individuals, society)