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Commission I – Kommission I

AGRICULTURE, ENVIRONMENT AND FOOD PRODUCTION: THE ROLE AND LIABILITY OF THE FARMER/GROWER

AGRICULTURE, ENVIRONNEMENT, ALIMENTATION: FONCTIONS ET RESPONSIBILITES DE L'AGRICULTEUR

LANDWIRTSCHAFT, UMWELT UND ERNÄHRUNG: ROLLE UND HAFTUNG DES LANDWIRTS

National Report – Rapport national – Landesbericht

Finland – la Finlande – Finnland

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Finnish report – Rapport finlandais – Finnischer Bericht

Agriculture, Environment and Food Production – The Role and Liability of the Farmer in Finland

Judge Eero Henrik Nordberg

Review of the legislation

1.1) General remarks of the Finnish legislation concerning civil liability of farming

Generally speaking the liability for damage means for the party who has suffered it in the first place the protection of property rights. The Constitution of Finland, as constitutions in most States, gives the legal basis for guaranteeing this protection (section 15 of the new Constitution 731/1999). Also the social or welfare state principle is in the constitution explicitly pronounced (section 19).

Upon a real consideration can be stated that the ownership and the usufruct of an area enjoys protection against pollutions and other disturbance coming from an other area caused by somebody's industrial or other activity. Concerning agriculture the cause may be e.g. smell or manure from livestock farming and use of pesticides or fertilisers in cultivation. The consequences of pollution can be found in soil, surface or ground water or in air. Also there may appear straight consequences to the health of people or to the goods or the nature.

Here can already be mentioned that in the Finnish legislation there are special liability rules in the field of environmental liability, both administrative (public) and civil law of nature. The administrative liability rules concern especially compulsory obligations to investigate polluted soil and groundwater as well as the duty to reinstate polluted areas. Nowadays these are regulated mainly in the Environmental Protection Act (86/2000, EPA). On the other hand the civil liability rules are included into the Act on Compensation for Environmental Damage (737/1994, ACED) and the Adjoining Properties Act (26/1920, so called Neighbour Law, amended e.g. 88/2000). These laws are of horizontal nature, and concern principally liability of almost all kind of pollutions to the soil, waters or air, as well as other disturbances, and from all kind of operations and operators, and so also farming and farmers[1]. However, EPA does not

[1] Earlier, till 2000 the Finnish legislation on prevention of environmental pollution had a sectoral structure. The historical roots were in water law, health legislation, neighbourhood rules, waste legislation and air pollution control as well as noise abatement. However, the reform of 1992 brought the corresponding permit systems formally together ("environmental permit"), with the exception of water pollution. The integration was not substantial which meat that each sectoral part-permit had its own rules on discretion, permit conditions and more. In 1995 the new environmental administration became permit authority for these "integrated" permits while as far as water pollution was concerned the water courts prevailed as general permit authorities according to the Water Act. In 1994 European requirements initiated a new reform which then was adjusted to the needs of the IPPC Directive 1996. The key-requirement of this Directive was the full integration of the permit control in matters concerning environmental pollution - this concept being already familiar to the Finnish legal system. One basic notion during this reform was that integration could not be achieved with the existing authority system where water courts and environmental centres had parallel duties on a different legal basis. Also there was a strong need to replace the sectoral substantial permit regulation by a new one which would adopt a comprehensive and environmentally integrated viewpoint. The Directive required "fully integrated decision-making" - the Finnish solution was an integrated authority. The reform took a long time and with some delay the Environmental Protection Act (EPA, 86/4.2.2000) entered into force on March 1st 2000.

At present, according to EPA there are three categories of permit authorities, namely two state authorities and one municipal. State permit authorities are the (regional) environmental permit offices and the regional environmental centres. The division of their mutual competence is based on formal and substantial criteria; in principle, the environmental offices are handling permits the largest projects, often requiring EIA. The projects

concern discharges to water through hudraulic construction, dredging, log flouting and drainage, which are regulated under the Water Act (264/1961, changed e.g. 88/2000). Naturally, neither has agriculture any privileged position according to the Tort Liability Act (412/1974). So in Finland there isn't any sectoral liability legislation on the field of agriculture.

In spite of the large harmonisation of the agricultural law, concerning e.g. production inputs, pesticides, biocides and fertilisers and the use of them as well as some other agricultural practices, there are no special liability provisions of civil law nature, stipulated at the Community level concerning agricultural sector activities. The same is also valid for most other sectors. The situation concerning liability of public law nature is a different. As an example can be referred to the Nitrate Directive (look further chapter II.3-5).

1.2) Facts about environmental situation of farming in Finland

In Finland for the time being, agricultural activities are the main single source of nutrients to surface waters, causing primarily eutrophication. Increased use of fertilisers, are the main factors that have caused increased nutrient levels in surface waters. Groundwater pollution caused by nitrate leaching from fields is only a local problem. High nitrogen fertilisation is connected particularly to animal production. In the regions where animal production is concentrated the use of animal manure and chemical fertilisers are not in balance with the nitrogen uptake of crops and other plants, resulting in increased leaching of nitrogen to surface waters and ground water.

Also drainage of arable land (and especially forests) has been considered a problem, because of its negative affects to the soil structure and contribution to the risk of water erosion. On the other hand extensive drainage has caused unacceptable side effects, e.g. increased nitrates in ground waters and loss of biological diversity.

There have been as well increased levels of plant-available phosphorus in soil. However, the present fertilisation amounts are more in balance with the uptake by crops. The still rather common agricultural practice of ploughing fields in the autumn, especially in cereal crop production, leaves the fields without sufficient protective vegetation cover for the winter and spring increasing the risk of erosion and subsequent leaching of phosphorus and other pollutants into surface waters.

Especially the Nitrate Directive (look further) and the use of "usual good farming practice" as defined in Commissions Regulation No 445/2002 (earlier in 1750/1999) laying down the detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development, as well as the special environmental aids according to the same regulations and the preceding regulation (EEC) 2078/91, have already helped to make the situation better and will in future make more progress in this respect.

1.3) The basic points of the Finnish law concerning agricultural liability

The farm activities are for an essential part based, especially in cultivation, on the use of the landed property. The owner has the right to use his land, as well as other property, the best way he sees, if it is not for some part legally limited[2]. The Constitution does not foresee a constitutional duty of landowners to take care of natural resources or other values[3]. However,

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are listed in the EPD according to competence. Municipal authorities are dealing with projects which lack regional or otherwise general importance.

[2] Natural resources in Finland are mainly private-owned. It concerns also watercourses and forests. The property right to forest land includes not only timber felling rights but also hunting rights.

[3] It doesn't exist in Finland any constitutional obligation to take care of one's property in certain way. So, there are not any rules enacted for landowners to cultivate arable land or use a certain kind of, e.g. ecological, way of production. This does not prevent to rule in normal legislative order common limitations or restrictions for

even without clearly set constitutional rules, it has been seen that the ownership does not legitimate a behaviour or activity being dangerous to the natural environment. Property rights are as such no legally protected basis for causing damage to others. Owners have had for some social reasons, e.g. health and state security, to adapt their activities to certain limits. For these reasons the limitations can be stipulated by laws enacted in normal order (e.g. the Neighbour Law). For other reasons, e.g. pure environmental reasons, the regulatory restrictions concerning property rights and comparable economic interests must have a constitutional basis or be stipulated in the same order as constitutional rules. Here can, however, limitations restricting the use of property rights be stipulated by law enacted in normal parliamentary order if in the law is taken the obligation to pay full compensation. [4]

What is mentioned above is valid although the quality of the environment was raised since 1995 onto the constitutional level in connection with a human right's reform of the constitution. To day the same environmental rules are in section 20 of the (new 2000) Constitution of Finland. This section on the one hand proclaims that the nature and its biodiversity, the environment and the national heritage are the responsibilities of everyone and on the other hand emphasises that the public authorities shall endeavour to guarantee for everyone the right to a healthy environment. The rule neither obliges any citizens directly nor, as such, guarantees a certain environmental quality for anybody. It mainly gives to the holders of public authority, actually the parliament itself, government and administration, the duty to strive for guaranteeing everybody the right to healthy environment.

1.4) Public environmental law system of Finland

Environmental law of Finland is partly of civil and partly of public law nature. It s influenced strongly, not only by Community legislation, but also other international law. Civil environmental liability is to its tradition civil (private) law, though with some special features. Because of it's dominant role shall at first a review be given of the public law regulatory system, i.e. Environmental Protection Act (EPA). This Act represents horizontally integrated environmental legislation, harmonised according to the EC community environmental law.

The regulatory system of the EPA consists of general principles, legal duties, administrative general rules, pre-control (permit and pre-announcement system), post-control (administrative compulsory measures) and liability rules for reinstatement of polluted soil. The objectives of EPA are (section 1)

- 1) to prevent the pollution of the environment and to repair and reduce damage caused by pollution;
- 2) to safeguard a healthy, pleasant ecologically diverse and sustainable environment;
- 3) to prevent the generation and harmful effects of waste;
- 4) to improve and integrate assessment of the impact of activities that pollute the environment;
- 5) to improve the citizens' opportunities to influence decisions concerning the environment;

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the use of inputs of agriculture, e.g. fertilisers, pesticides and manure, being harmful for the ground or surface waters or the soil.

[4] Because property right is a concept related to both constitutional protection and economic interests, the law in concern of industrial and other economic activities, e.g. farming, is protecting both the operator and the victim. Finnish constitutional law allows, without compensation, environmentally motivated limitations only if they are enacted by law on general not individual grounds. These limitations can mean a general duty, acted in a special law, for owners to obtain permission for the use of natural resources. If the intention is to enforce protection measures for a certain limited area (nature conservation area etc.), then as a rule compensation for losses is foreseen. In the field of pollution law the situation is, however, different: this sector does not recognise property rights nor does it foresee compensation for rejected permit applications.

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- 6) to promote sustainable use of natural resources; and
- 7) to combat climate change and otherwise support sustainable development.

The principles that apply to activities that pose a risk of pollution are following: preventing and minimising harmful impact, caution and care, best available technique (BAT), environmentally best environmental practice (BEP) and "polluter pays" (section 4 of EPA) . The operators, e.g. farmers, are also obliged to be aware of the impacts and risks of their activities and of the means to prevent or to reduce harmful effects (knowledge requirement, section 5). As far as the location of activities, even such as barns and other buildings for livestock, is concerned, planning decisions should be taken into account as well as other criteria related to health and suitability (e.g. groundwater protection, nature preserves etc.).

The concept of pollution refers in EPA (section 3) to such emissions or deposit of a substance, energy, noise, vibration, radiation, light, heat or odour caused by human activity leading either alone or together with other emissions to a harmful change in the functions of the environment and, finally, negative impacts caused by such a change. The harmful changes in environment may appear as harm to health, harm to nature and its functioning, prevention or material hindrance of the use of natural resources, decreased general amenity of the environment or degeneration of special cultural values, reduction of the environment's suitability for general recreation purposes, damages or harms to property or its use or constitution of a comparable violation of the public or private good.

The law does not apply only to real situations of pollution but also to the prevention of risks. Therefore preventive measures may be required even if pollution is not probable.

The permit system is the main tool for pollution control. The criteria concerning authorities, decision-making and discretion are in principle regulated by law but there are more detailed provisions in the complementary Decree (Environmental Protection Decree 169/2000, EPD). The permit procedure is based on a case by case decision-making but there are numerous technical and similar provisions which must be taken into account. These provisions, enacted by means of the State Council's Decrees , refer for instance to emission limit values and environmental quality standards, with the origin mainly in EC law.

EPA also regulates control of accidental and temporary activities (notification), prevention and restoration of polluted soil and groundwater and, of course, the use of compulsory measures.

The need of an environmental permit is regulated by law (sec. 28 of EPA) and concretised by decree (a list of operations is in section 1 of EPD), but there are some additional situations appointed by law). A permit is required in case of water pollution, professional waste management and in some other cases.

The possible environmental permit may be rejected on certain grounds, especially when the project would cause health risks, groundwater or soil pollution or remarkable damage to nature or landscape values (section 42 of EPA). Groundwater or soil pollution, in the later on reported concept, can never be permitted, without any exception even for the benefit of farming. Otherwise the permit may be granted under specific permit prescriptions the content of which depends on the activity. If the project implies water pollution compensation for damage will be given in the permit procedure.[5]

Instead of a permit, a preannouncement or notice given to the competent authority is sufficient for instance in cases concerning temporary noisy activities, experimental use of substances or techniques. In case of accident involving environmental risk a notification is also needed.

It is to be emphasised that there is in EPA unconditional groundwater pollution prohibition. Thus, a substance shall not be deposited in or energy conducted to a place or handled in a way

[5] Entitle to appeal against permit and other decisions according to the EPA are parties to the procedure, interested associations and municipalities concerned and competent supervising authorities, both state and municipal authorities.

that 1) groundwater may come hazardous to health or its quality otherwise materially deteriorate in areas important to water supply or otherwise suitable for such use; 2) groundwater on the property of another may become hazardous to health or otherwise unsuitable for usage; or 3) the said action may otherwise violate the public or private good by affecting the quality of groundwater (section 8 of EPA). On the other hands the soil pollution is prohibited so that waste or other substances shall not be left or discharged to the ground or in the soil so as to result in such deterioration of soil quality as may endanger or harm health or the environment, substantially impair the amenity of the site or cause comparable violation of the public or private good (section 7 of EPA). These concepts of prohibition mean among others that no permit can be given when the consequence could be any of those mentioned above. In concern of surface water pollution there isn't any similar definite prohibition.

1.5) General rules of the civil law liability

Usually the possible civil law liability must be appraised in accordance with the Tort Liability Act (412/1974), which is the general law on liability for damages. The liability according to this Act is based on negligence (chapter 2 section 1)[6]. Compensation for property damage shall cover, inter alia, costs arising from the reduction in value or the value of an object (e.g. the yield) as well as the loss of income. According to the principal rule when the loss is connected with damage to property (or personal injury) it constitutes also compensation for economic loss (chapter 5 section 1 and 5) [7]. So if the farmer has been negligent in cultivation or keeping livestock, he is liable for the personal injury or damage to property caused to another, e.g. a neighbour. In cases covered by the Act on Compensation of Environmental Damage (ACED, look the following chapter) the liability is however strict of its nature.

1.6) Civil law liability for environmental damage

Finland, among some other states [8], has enacted in 1994 an environmental liability system with strict liability under civil law for personal injury, property damage as well as for pure economic (financial) loss if not considered minor[9]. The Act on Compensation for Environmental Damage (737/1994, later ACED) came into force on 1 June 1995. It includes also costs of prevention and reinstatement (section 6 of ACED).

ACED fulfils the main requirements of the Council of Europe (Lugano) Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment[10], with the exception of the rules concerning reinstatement that is covered by EPA. The Act applies to identified (probable) polluters only, not to damages caused by historically unclear factors.

The substantial liability rules of the ACED apply both to lawful and illegal damage and there are no limitations for the application of this rule. So any permit, e.g. on the basis of EPA, does not free from the strict liability. The strict liability means that the party that has suffered damage is able to claim compensation without having to prove that the operator was reckless or negligent.

The liability under ACED is not restricted to certain activities. Agricultural holdings and practises are not excluded from the Act. So this liability may be triggered e.g. when the

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6 An employer is vicariously liable in damages caused by an employer (chapter 3 section 1).

7 Without this connection can economic damage according to the Tort Liability Act be compensated where the damage has been caused by an act punishable by law or in the exercise of public authority, or in case there are especially weighty reasons for that.

8 For instance in Denmark was enacted the Environmental Liability Act (Act. No 225 of the 6 April 1994).

9 Compensation for this shall, however, always be paid for loss inflicted criminally (section 5.1).

10 This convention, that is not yet in force, also represents basically civil law requirements. It is noticeable that the European Union (EC) Directive Proposal 2002 (Doc. 502PC0017) on environmental liability has a mainly administrative character.

environmental damage is caused by spraying of a pesticide or manure or by leakage of a manure tank or even by pollution or disturbance from possible GM crop cultivation although these are not especially mentioned in the Act (sections 1.2 and 5).

Liability to compensation lies with a person whose activity has caused the environmental damage or who is comparable to that person carrying out the activity[11]. There is also secondary liability meaning that not only operators and other holders of land but also their successors and partners may become liable (section 7). As far as successors are concerned strict liability requires mala fides, i.e. there must be fault in the investigations of the quality and the risks of the purchased object. Proof of their own guilt to the damage is not required.

ACED covers a large area of environmental infringements. Liability arises if damage is caused to another by an activity carried out in a certain area (property) and resulting from pollution of the air, water or soil or noise, vibration, radiation, light, heat, smell or other similar disturbance (section 1 and 5). Liability is not limited to damage caused within that property or by its emissions. The sauce of emission could be also for instance accidental spreading of pesticide or phytosanitary decease during transportation of equipment or harvest trough a neighbouring farm[12]. The interfering activity does not need to cause personal injury or property damages, just affect a person's ability to use and enjoy his or her property. The harmful release into the environment may, among others, consist of micro-organisms (and thus also of GMOs as already mentioned) and even phytosanitary harms.

ACED does not give a clear definition for the environmental damage. The loss, to be compensated, can result from the phase of pollution or disturbance directly or indirectly. The disturbance may be shown in the environment also e.g. as direct damage to animate or inanimate property.

In addition to damage also related costs may be compensated, i.e. the necessary steps by the victim or authority to prevent imminent damage or to reinstate damaged property or environment (section 6 of ACED).

By virtue of ACED compensation shall be paid if it is shown that there is probable causal relationship between the polluting or disturbing activity concerned and the damage in the environment. In assessing that causality consideration shall be given, among other things, to the type of activity and damage and to the other possible causes of the loss (section 3). This lightens the burden of proof of the victim. On the other hand the strict liability is smoothened by a rule, according to which the environmental damage is recoverable, if it is not deemed reasonable to tolerate the disturbance taking into account, among other things, the local circumstances, the situation resulting in the occurrence of the disturbance and the regularity of it elsewhere in similar circumstances. The obligation to tolerate nuisance is not applicable to personal injury or to material loss of greater than minor significance. It does neither affect damage caused by deliberate or criminal behaviour (section 4).

The provisions of the ACED shall also apply to environmental damage caused by activities meant in the Neighbour Law[13]. ACED is also applicable to environmental damage where compensation is due by virtue of the Product Liability Act (694/1990). However, it does not apply to contractual liability for compensation (sections 1 and 2).

Multiple parties are jointly and severally liable for compensation for environmental damage where their activities have, on the balance of probabilities, caused it by relevant activities as a

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[11] In the assessment of this comparability due consideration shall be given to the competence of the person concerned, his financial relationship with the person carrying out the activity and the profit he seeks from the activity.

[12] However, ACED does not apply to vehicles and movable conveyance in general as far as damage caused in traffic is concerned.

[13] Section 23 a (738/1994) of the Adjoining Properties Act (26/1920)

whole (section 8 of ACED). This may be the case e.g. if several industries together cause air pollution which again leads to the victim's disease.

ACED includes also provisions about liability for redemption. If the real estate is, owing to environmental damage, rendered entirely or partially useless to the owner, or the purpose it is intended for is essentially hampered, the party liable for compensation shall redeem the entire real estate or part thereof on the demand of the owner (section 10).

1.7) Compulsory environmental insurance

It is notable that in 1998 was enacted the Act on Insurance on Environmental Damages (81/1998) that stipulates an insurance obligation to private corporations practising an activity which is associated with essential environmental risk or which generally is causing nuisance to the environment. This compulsory insurance shall be taken for environmental damages caused by activities practised in Finland and meant in the ACED, as well as for costs arisen from prevention of such damage and from restoration of the environment. All parties holding an environmental permit are obliged to take out insurance. So the obligation to take this compulsory insurance concerns only some agricultural activities, e.g. bigger livestock units that need an environmental permission.

The compensation shall cover the damage for that part which has not been possible to recover from the one being responsible for it according to ACED and not from his third party liability insurance.

2. Questions concerning liability of agricultural activities

2.1) Specific civil liability of farmers

As already mentioned in the first (I) part of this report, there are no specific sectoral system of norms in Finland dealing with civil liability of farmers. Concerning liability of agriculture can so be referred especially to the above chapters 5-7.

2.2) The implementation of Council Directive 85/374/EEC concerning liability for defective products in concern of agricultural products

Council Directive 85/374/EEC on Liability for Defective Products[14], after being amended by the directive 1999/34/EC, already establishes strict liability for personal injury and private property damage caused to the consumer or another user of the , inter alia, by primary agricultural products[15] which prove to be unsafe. So nowadays both farmers and other producers are strictly liable if any primary agricultural product which they have developed, planted, commercialised or processed turns out to be unsafe causing such traditional damage.[16]

The above mentioned Directive is implemented in Finland through the Product Liability Act (694/1990, amended 539/1993). The Act shall apply where from a product has caused personal injury or damage to items of property (other than the defective itself) provided that the item is a type ordinarily intended for private use or consumption and was used by the injured person mainly for his own private use or consumption (section 1 and 2). This product liability

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[14] The Council Directive 85/374/EEC on the approximation on the laws, regulations and administrative provisions of the Member States concerning liability for defective products

[15] E.g. cereals, fruit, vegetables and meat.

[16] See also Report from the Commission COM(2000) 893 on the Application of directive 85/374 on Liability for Defective Products, p. 35, where the Commission emphasises that the future environmental liability regime should in any event supplement the system of product liability by covering damage to the environment such caused by GMOs.

contains strict liability to the producer in putting defective products on the market. Also farmer is responsible even in regard unprocessed agricultural products marketed straight or included as raw material in manufactured foodstuffs (section 5). It means from his and the marketers side (in a production chain) strict (objective) liability containing in the first place following elements: liability without fault, illegality of clauses limiting or excluding liability towards the victim, and not exonerating the producer even if he could prove that the state of scientific and technical knowledge at the time when he put the product into circulation was not to enable the existence of a defect to be discovered (section 7). The Product Liability Act presupposes e.g. that the product shall be used following the given directions (section 3).

On the agricultural sector of product liability there are also some special norms to protect the user of production inputs. These concern marketing of seeds, feedstuffs and fertilisers.

According to section 14 of the Seed Marketing Act (728/2000) the packer and another preparing the seeds for the market (as well as the importer) is liable for the damages caused to the user of the seeds through the fact that the seeds appear not to conform with the given information relating to them or appear to have other defects. Similarly to the provisions of the Product Liability Act (694/1990), the strict liability, however, does not exist, if the defendant can prove probable that the seed did not have the defect at the time when it was placed on the market. The liability of other marketers of seeds, usually a retail seller who at the same time has not acted in the role of packer, other who prepares it to the market or an importer, lies under the provisions regulated in the Sale of Goods Act (355/1987), provisions of which are based partly on strict liability and partly on negligence.

Section 14 of the Seed Marketing Act regulates the marketer's liability for the damage caused to the user of the seeds, not to any other person. It is also excluded according to the Product Liability Act (694/1990) to put the marketer of seeds straight liable to the user's neighbouring farmer for other damage than perhaps those causing personal injury or damage to private property. Naturally it is rather difficult to imagine that personal injuries could appear as a consequence of the use of seeds, unless perhaps through handling of such seeds that has been treated with chemical disinfectants. Additionally shall be noted that similar provisions to those of the Seed Marketing Act exist also in the Feedstuff Act (396/1998) and Fertiliser Act (232/1993).

On the other hand farmer himself as the operator can become strictly liable for damages caused in the environment through the use of above mentioned inputs according to the ACED, e.g. for ground water pollution, even when having heeded e.g. label instructions of a pesticide product.

2.3-5) The implementation of the Council Directive 91/676/EEC concerning the Protection of waters against pollution caused by Nitrates from Agricultural Sources and the code of good agricultural practices as well as diffuse contamination in relation to the farmers civil liability for environmental damages.

Since the beginning of 1990s, the use of nitrogen and phosphorus fertilisers has diminished in Finnish agriculture (and forestry), but still the level of phosphorus nutrients is in some places too high.

The Directive 91/676/EEC (Nitrate Directive) , that is a minimum directive, was incorporated to the Finnish legislation 1995 through adding into the Water Act a new section mandating the government to give orders (nowadays decrees) concerning restrictions of discharge of nitrates from agriculture into waters. Nowadays the same mandate is placed in section 11 of the Environmental Protection Act. Originally these were given 1998 by government decision (219/1998). That decision was replaced 2000 by government degree (931/2000, Nitrate

Decree). The decree comprises the action programme referred to in the aforementioned Nitrate Directive. Actions of the decree are put into effect throughout the country.

The nitrate decree includes instructions for good agricultural practices. Enhancing of good agricultural (and forest) management practices has been an established part of Finnish water protection scheme even before Finland joined the EU. *The instructions (and recommendations) for good agricultural practices* according to the decree concern storage and use of animal manure, application of nitrogen fertilisers as well as location of animal shelters, outdoor yards, structures of silage containers, farmer's responsibilities to conduct nitrogen analyses and keep records of amounts of nitrogen fertilisers used on fields and of crop yields.

The manure storage for waste excreted by animals must be sufficiently large for manure accumulated over 12 months, excluding manure remaining on pasture during the same grazing season. Manure storages and gutters must be watertight. There are certain principles set out for the size of storage. Deviation from the required volume for manure storage is possible if manure is transferred to another user who can accept it under a permit (granted in accordance with section 28 of EPA), or to another farmer to be stored as specified in the decree or to be put into immediate reuse, or if the manure is stored in a properly made and covered manure heap provided the storage follows a certain defined procedure and releases into the waters can be prevented. Manure heaps must not be sited in areas that may become flooded or in groundwater areas.

Animal manure must not be applied between October 15 and April 15. However, manure may be applied in the autumn up to November 15, and application may be started in the spring no earlier than April 1, provided the ground is not frozen and is sufficiently dry to avoid runoff into watercourses and any danger of subsoil compaction. However, manure may not be applied on grassland after the 15th September. The maximum amounts of manure that can be applied in the autumn are 30 tonnes/ha of solid manure, 20 tonnes/ha of cow slurry, 15 tonnes/ha of pig slurry or 10 tonnes/ha of poultry or fur animal manure.

Organic fertiliser applied in the autumn must always immediately, and within 24 hours at the latest, be incorporated, or the field must be ploughed. Nitrogen fertilisers must not be applied on snow-covered, frozen or water-saturated ground. Application of nitrogen fertilisers is prohibited between October 1 and April 15 on field areas that are repeatedly flooded in spring, but this does not apply when new growth is being established.

Animal manure may be applied on a field as fertiliser equivalent to up to 170 kg/ha/year of nitrogen. Surface application of animal manure s always prohibited on fields whose average slope exceed 10 per cent.

At this point shall be noted additionally, that the EPA mandates the government to stipulate by decree (earlier by decision) on limiting the discharge or deposit of sludge in the environment or prohibiting the discharge into the environment of sludge that contains substances hazardous to health or the environment (section 11 paragraph 5). The mandate is actually for the implementation of Council Directive 86/278/EEC on protection of the environment, and in particular of the soil when sewage sludge is used in agriculture. So the Government Decision concerning the use of Waste Water Sludge in Agriculture (282/1994) leaves farmers the possibility to use limited amounts of sludge as fertilisers. In practice these are not applied, because Finnish farmers are, understandably, afraid of the heavy metals in them.

EPA presupposes that administrative permit is required for institutional or professional recovery or disposal of waste (section 28, paragraph 2, subparagraph 4). However, by decree (mandated through section 30, paragraph 1 of EPA) is stipulated exception concerning the recovery or disposal in agriculture (and forestry operations) of natural, non-hazardous waste of vegetal origin deriving from the industry's own operation, as well as the recovery of treated, non-hazardous sludge from wastewater or septic tanks, manure, or non-hazardous ashes or cinders as soil improvement material or fertilise (Decree section 4 paragraph 1 subparagraph 1 and 3). The use of latter ones is regulated also under the above-mentioned Nitrate Decree.

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Regarding farmers' civil liability shall be referred to the earlier reported provisions of the ACED. It must be emphasised that the substantial liability rules of the ACED apply both to lawful and illegal damage and there are no limitations for the application of this rule. So any permission e.g. on the basis of EPA or precise heeding of good practice or product instructions does not free from the strict liability for the environmental damage (pollutions and other disturbances) falling under the regulations of the ACED. It covers even accidental situations.

The European Parliament and Council Directive 2000/60/EC establishing a framework for Community action in the field of water policy has adapted a combined approach for point and diffuse sources of discharges into surface waters (article 10). The Member States shall *in case of diffuse impacts* ensure the establishment and implementation of the control set out, among others, in the Nitrate Directive. These public law measures are the most suitable to get results concerning diffuse contamination.

Provision concerning *punishment* for degradation of environment in violation of EPA of regulations issued under it (i.e. decrees) are laid down in the Penal Code chapter 48 , sections 1-4 ((578/1995 and amended 112/2000). However, EPA includes complementary provisions, according to which whoever deliberately or through negligence in a manner other than referred in those paragraphs of the Penal Code, violates a prohibition in EPA or issued under it a decree, e.g Nitrate Decree shall be sentenced to a fine, unless a more severe punishment is provided for elsewhere in the law (for instance in the Penal Code).

In respect of *farmers civil liability* for surface or ground water pollution there has not, as far as the author has observed, appeared any Supreme Court cases. One reason for this may be that the ACED came into force 1995, understandably without retrospective effects, and the earlier legislation (i.e. the Tort Liability Act) presupposed negligence. The definition of pollution concerning discharges into surface waters is vague and there is in ACED the obligation to tolerate a nuisance in certain circumstances, i.e. the strict liability of ACED is alleviated through a provision according to which compensation is paid for environmental damage only if toleration of the nuisance is deemed unreasonable (ACED section 4). Here consideration shall be given, among other things, to local circumstances, the situation resulting in the occurrence of the nuisance, and the regularity of the nuisance elsewhere in similar circumstances. The obligation to tolerate the nuisance concerned shall, however, never apply to loss inflicted deliberately or criminally, or to bodily injury, or to material loss of grater than minor significance.

2.6-8) The use of phytosanitary products and pesticides, limits to the use in respect to the quantity and in respect to the localisations where they can be used. Vulnerable zones and specific zones of protection included in those zones in regard to which the use of chemical products is prohibited and restricted. Civil liability/administrative infringement in of the farmer in the case of non-compliance with the before mentioned limitations

In Finland pesticides are used rather moderately in cultivation compared with many other European countries. Using pesticides (and biocides) in agriculture is not normally in need of a special permission. However, there exists the harmonised dual system for authorisation, use and control of plant protection products based on Council Directive 91/14/EEC, where Finland among other Member States takes part in evaluation of active substances of these products and Commission approves (or rejects) them to be taken into a positive Community list of these substances. The authorisation of plant protection products is ultimate decided at national level. The directive necessitates that these products, authorised in some of the Member States products containing such substances and authorised in some of the Member States should, if wanted to be marketed in an other Member State, be authorised there, too. This authorisation can't be rejected, unless the agricultural or environmental conditions differ significantly.

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The process of evaluation and approval of active substances, already earlier marketed in Member States, is and still will be going on for several years. However, in the long run Member States are not allowed to permit to authorise other products than those included in that list, but article 8.2 of the directive permits Member States to authorise, under certain conditions, until the end of ongoing transitional period, placing on the market plant protection products that were already on the market two years after the adoption of the directive i.e. 15.7.1993.

In Finland the above-mentioned directive has been implemented 1994 by changing the Pesticides Act (327/1969, amended inter alia 1204/1994). The Act originally, already, prescribed that the biological efficacy and the health effects of a pesticide had to be investigated before approval and registration of these products. The evaluations of environmental effects were included into the approval process 1984. Pesticide Board makes the approval decisions. The Plant Production Inspection Centre co-ordinates the national authorisation and registration process.

Often in connection with the approval particular restrictions are set as conditions for the usage of a pesticide in order to avoid or decrease harmful effects of it to the environment. E.g. the use of a pesticide in successive years on the same field, the use in the groundwater areas or near watercourses (buffer zones) may be forbidden.[17]

Previously the approvals for the usage of biocides were by the Pesticide Act. However, the European Parliament and Council Directive 98/8/EC concerning the placing of biocide products on the market was implemented through including the necessary provisions in 2000 into the Chemicals Act. According to the amendment (1198/1999) the previous pesticides legislation specific for biocide uses of these products (e.g. indoor insecticides and repellents) is to be abolished after a transitional period. After this period the competent authorities for authorisation of biocide products are the National Product Control Agency for Welfare and Health and the Finnish Environmental Institute, depending on the type of the product in concern. The procedure hardly differs from the one for pesticides, including at the Community level approvals for the active substances and authorization of the products at the national level.

According to EPD (section 3) an environmental permit shall be required if the activity causes the discharge into waters or into a public sewer of such substances as e.g. certain chemicals and, unless it is clear that their discharge poses no danger of contamination to the waters, all kind of plant protection products, pesticides, chemical preservatives and biocide products and their derivatives, as well as substances causing eutrophication, and here especially compounds of nitrogen and phosphorus.

As already mentioned, in connection with the authorisation particular restrictions are set as conditions for the usage of certain pesticide products in order to avoid or decrease harmful effects of it, e.g. to the water environment. These consist of buffer zones against important or other for supply capable ground water sources and surface waters (e.g. 10, 15 or 25 meters). According to the Nitrate Decree is the use of nitrogen fertilisers prohibited on areas closer than 5 meters to a watercourse. Along the width of next five meters, surface application of these fertilisers is prohibited if the field slope exceeds two meters. Manure heaps must not be sited in areas that may become flooded or in groundwater areas.

To protect the purity of water can according to the Water Act be given a permit for establishing a special shelter area for a source of surface or ground water supply (chapter 9 section 19 and 20). The permit may include restrictions for the landowner or the lessee (tenant) of the area in

[17] Commission Directives concerning inclusion of new active substances into the Annex I of the Council Directive 91/4/EEC often provide special provisions for the implementation to Member States. These may order particular attention to be paid for instance to the protection of aquatic ecosystem, groundwater when the active substance is applied in regions with vulnerable soil and/or climate conditions, as well as t the protection of operators, birds, wild mammals etc.

use of it, e.g. prohibition of spreading of pesticides, use of fertilisers and placing of fuel tanks.[18]

However, farmer is under the strict civil liability according to ACED for factual pollution caused by these authorised pesticides and biocides into the ground or surface or ground waters and other possible environmental damages covered by the act, even when having used them obeying all instructions with care. The same applies also for the use of fertilisers and for the spreading of manure, even when the regulations and recommendations of Nitrate Decree have been accordingly observed.

Here shall be noted that by practising agricultural activities could also pollution of the soil be caused through dissemination of an plant disease. According to the Phytosanitary Act (1203 /1994) farmer is obliged to inform the competent authority about a suspected plant disease and another special phytosanitary harm[19] and to obey orders given by the authority for combating of them. Damages caused by and costs of the compulsory measures against some dangerous ones are compensated wholly or partly by the state to the farmer. At least in case of spreading of the plant disease or other phytosanitary harm into the neighbouring fields by negligence the farmer becomes liable for the caused damage. Its is unclear, if the farmer could become even strictly liable for such nuisance under ACED.

2.9) Possible plans to provide for licences or administrative authorisations for the realization of certain farm activities which may affect the environment. Liability in case of causing environmental damages even when acting within the limits of the licence; or is it covered by the licence.

It is to be noted that EPD requires a permit for establisment of livestock shelters housing at least 30 dairy cows, 80 beef cattle, 60 full-grown sows, 210 finishing pigs, 60 horses or ponies, 160 ewes or oats, 2700 laying hens or 10 000 broiler hens, or other livestock shelters which correspond in terms of manure or environmental impact to a livestock shelter intended for 210 finishing pigs. A permit is also required in respect of fur farms with at least 250 breeding female mink or fitch, at least 50 female foxes or raccoons, or at least at least 50 breeding females of some other fur-bearing species, or other fur farms which correspond in terms of manure production or environmental impact to a fur farm intended for 250 breeding female mink. (section 1 paragraph 1 subparagraph 11a-b).

The above-mentioned permission is stipulated with the purpose of forehand prevention to control the project's location, construction and other circumstances being compatible with the legal provisions. The permit includes normally special provisions. Both public liability according to EPA for preventing and eliminating or minimising harmful impact of pollution to environment and civil liability according to ACED for compensation of the environmental damage and costs of prevention and reinstatement of that damage to the victim is, however, not dependant on being in of those provisions or any other negligence.

2.10) Specific norms of civil liability concerning agricultural activities causing environmental damaged within protected areas.

Finland has an extensive network of protected areas in purpose to conserve the special features and diversity of the national nature. Nowadays, the designation of national parks, strict nature reserves and other protected areas is carried out through the 1996 Nature Conservation

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[18] E.g. according to section 19 of chapter 9 of Water Act an area around the water intake can be assigned as a protection zone, inside which it is prohibited to carry out activities that can harmfully impair the quality of waters. The damage, nuisance or other loss of benefit caused by the assignment must be compensated by the petitioner (i.e. water intaker).

[19] Potato production is the main subject of harmful plant diseases in Finland.

Act (1096/1996, amended inter alia 492/1997). The two first ones are set up since 1930s, after first getting the area into the ownership of the state. Usually modern agriculture is not possible in these areas. The other protected areas can be established in some cases without the consent of the private landowner, but the provisions for the protection of the area may not here without the landowner's concession restrict the use of the land, e.g. for agricultural activities, more than what follows from an conservation program approved by the Finnish government. In case of significant harm to the owner the state is obliged to pay compensation for it.

In addition to those above-mentioned protected areas, there are lots of small private-owned protected areas, as well as some bigger protected forest areas owned by paper companies or other non-governmental organisations, all of them established through an application of the landowner. The act recognises also a new concept of "landscape area" which represents a lighter form of protection than those mentioned above. This can be established without the consent of the private landowners concerned but provisions being designated by the authority for the area may not cause significant harm to the landowners.

Through the Nature Conservation Act are also implemented the obligations derived from EU legislation of this sector, especially the Habitats Directive EEC 92/43/EC and Bird Directive 79/409/EC. So 1998 Finnish government proposed to the Commission the inclusion of a total of about 1450 sites into the Natura 2000 Network (covering 12 per cent of Finland' surface area).

It shall be stated that public liability and civil liability for all such agricultural activity being possibly practised in the above mentioned protected areas that have caused pollution or other disturbance there/or to another subject is according to the EPA /ACED quite the same as similar disturbance being caused anywhere else. Only the sensitiveness of the area may make some difference to the liability. On the other hand there are naturally special punishment provisions in the Penal Code, as well as complementary ones in the Nature Conservation Act (section 58), against the injuring of the nature and other violations against the latter.

2.11) The application of the polluter pays principle having concrete manifestations with regard to agricultural activities

The polluter pays principle is the dominating principles for environmental liability. It is also, as can be noticed from this report, the main principle according to the Finnish legislation represented especially by EPA and ACED. Practical problems rise from earlier leakage and other neglects. Sometimes polluter has nevertheless not acted in conflict with the legislation of that time. If the activity on the site of the cause for the emission has ceased or if the property has a new owner, the responsibility e.g. for the restoration or the costs of it may fall on the new owner or, in some cases, on the community and, as the last resort to the state.

2.12) Jurisprudence related to the civil liability of the farmer for environmental damages

As already mentioned in connection with answering the questions 3-5, there are not yet any Supreme Court jurisprudence concerning the civil liability of the farmer for environmental damages. However, there are cases concerning the strict Neighbour Law liability for nuisances, here however mainly such where a building has been constructed too near the boarder of a neighbour.

Here may be referred one of the latest prejudicial cases from the Supreme Administrative Court concerning application of manure, KHO 1029/2001:

- Manure from the pig house was intended to be applied on the fields situated at nearest about 300 meters away from a factory using textiles in the production. According to the received evidence there is a risk that the smell of manure infects those textiles and thus the manufactured products. The question is of the unreasonable permanent nuisance referred in

section 17, paragraph 1 of the Neighbour Law. To prevent this nuisance the court considered necessary to set to the environmental permit for the establishing of the concerned live stock shelter a provision of a special method according to which the manure must be applied on those fields.

Additionally shall be mentioned that a great number of environmental permits based on EPA have concerned establishment of big live stock shelters (about 35 per cent of all permits during the period 1.3.2000-28.2.2002), where the provisions for prevention of water pollution and other environmental disturbances, e.g. caused by smell, play at the same time a central role.

3. Some remarks of the possibly forthcoming community legislation

The community legislation does not yet include provisions in the field of environmental liability. So it is still the concern of national legislation. However, in the beginning of 2002 the Commission has given legislative proposal for a Council and Parliament Directive on environmental liability with regard to the prevention and restoration of environmental damage (COM(2002)17, 2002/0021 COD). The proposal contributes to implement the objectives and principles of the Community's environmental policy as set out in article 174 of the Treaty. The leading principle is here that the polluter should pay. The proposal represents actually a public law model, because traditional damage, i.e. personal injury and damages to goods, is not covered by the proposal, and its main focus is on putting liability upon the individual Member States to operate an administrative scheme for prevention and restoration of environmental damage, but not so much on liability between private individuals. The proposed directive will not have retrospective effects.

According to the proposed directive damage means a directly or indirectly occurring measurable adverse change in natural resource, i.e. biodiversity, water and soil, including subsoil, and /or impairment of natural resource service caused by any of the activities covered by the directive.

These damages are following:

- a) water damage adversely affecting the ecological status, ecological potential and/or chemical status of the waters concerned to such an extent that this will or is likely to deteriorate from one of the categories defined in the Water Framework Directive 2000/60/EC ;
- b) damage to biodiversity in habitats and species protected at EU level [20] and national level, which damage seriously affects in an adverse manner the conservation status of concerned biodiversity;
- c) land damage as a result of soil and subsoil contamination that creates serious potential or actual harm to human (public) health.

Under the scope of the proposed directive would be the above mentioned environmental damages caused by operation of certain listed occupational[21] activities and any imminent threat of such damages occurring by reason of any of these activities.[22] The operators would be liable under the directive for the costs of preventing or restoring the environmental damage. Operations of the actually risky or potentially risky activities listed in Annex I, defined in terms

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[20] This refers to Annex I of the Bird Directive 79/409/EEC and Annexes I, II and IV of the Habitat Directive 92/43/EEC.

[21] These include also non-profit making activity and the rendering of services to the public.

[22] However, the directive would apply also to such biodiversity damage that is caused by the operation of any occupational activities other than those already listed in (the Annex of) the directive and to any imminent threat of such damage.

of EU legal instruments, would address e.g. following fields: integrated pollution prevention control; air, water and aquatic pollution; waste; plant protection and biocide products, deliberate release into environment of genetically modified organisms (the Release Directive 2001/18/EC). The directive would not however apply to environmental damage nor imminent threat of that caused by pollution of a widespread, diffuse character, where it is impossible to link the negative effects with certain individual operator's activities.

When environmental damage has occurred, the proposal leaves it to the competent authority to decide either to require the operator to take the necessary restoration measures or itself take these measures or have them implemented by a third party. Always when the operator fails to comply with a request, the authority shall take care of the necessary restorative measures.[23]

In accordance with the "polluter pays" principle the operator who has caused the damage or who has created a situation that could lead to environmental damage, must ultimately bear the costs connected with the restoring or preventive measures.[24]

The proposal directive foresees some exemptions and defences. Thus, the directive shall not cover environmental damage or an imminent threat of it caused by e.g. an emission or event allowed in applicable laws and regulations or in the permit or authorisation delivered to the operator, or emissions or activities that were not considered harmful according to the state of scientific and technical knowledge at the time the emission was released or the activity took place.

However, the operator who has been negligent cannot rely on these exemptions (so called permit compliance and state of art).

Those defences will mean for instance that, if some pesticide, biocide or GMOseed causes damage but its release was authorised or the damage was not foreseeable on the basis of scientific knowledge at the time, the Directive would not give rise to liability for the operator unless he has been negligent. So the Directive would not in that case establish strict liability for the farmer as operator resulting by contamination of the use of those products. On the other hand it would not hinder the Member States to maintain more stringent provision. Such exist in Finland, as already explained in this report. Actually this right of Member States is directly based on Article 176 of the Treaty.

Political agreement on the proposed new environmental liability directive in question has been reached by environmental ministers in June 2003. Their common position will be viewed by the European Parliament at their second reading perhaps already in this summer.[25]

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[23] On the other hand, when the operator is faced with an imminent threat of environmental damage occurring he should immediately take necessary preventing measures to avoid that this situation results in damage. If the operator is not aware of the threat, the authority shall make notice of it to the operator and require him to take the necessary measure or shall itself take such measures. The latter shall apply also when the operator fails to comply with the obligation.

[24] As an exception to this strict liability the proposed directive gives the case where biodiversity damage or the imminent threat of it is caused by an operator in the course of an occupational activity other than of those identified in Annex I of the directive. Here the operator shall be obliged to bear the costs of preventive or restorative measures taken pursuance the directive only if he is found to be negligent. In case the authority requires the operator to take the measures, these will be financed directly by the operator. If the measures has been implemented by the authority or by a third party on its behalf, and one or several operators are liable for the damage under the proposal, the competent authority must, in conformity with the polluter pays principle, recover the restoration costs or the costs of preventive measures from the liable operators.

[25] Agra Europe, June 20, 2003, EP/6