and non-executives. He infers that regulatory intervention is not the most effective means to address many of the financial institutions’ governance problems, either because regulation is too blunt a remedy (e.g. regulation of directors’ performance) or simply because regulation is absolutely unsuitable for tackling the underlying causes of the problem (e.g. directors’ risk culture).

The final part of the book comprises three articles dealing with the international dimension of securities regulation and supervision. Chapter 13 (by Van Cauwenberge) is rather descriptive, discussing international supervisory cooperation in the securities field through the lens of the initiatives of the International Organization of Securities Commissions. The next chapter focuses on the cross-border resolution of complex financial institutions. After discussing the tension between the three competing approaches on the resolution of globally active financial firms, i.e. territorialism, universalism and contractualism, the author (Hüpkes) rationalizes the pillars upon which an effective cross-border resolution regime could be founded. The analysis is straightforward, concise and informative. In the last chapter of the book, James Cox explores the extraterritorial reach of US financial laws. Building on the US Supreme Court decision in *Morrison v. National Australia Bank Ltd.*, the author discusses the limitations of the extraterritorial scope of the US Foreign Corrupt Practices Act and of certain provisions of the US Sarbanes-Oxley Act.

Panagiotis K. Staikouras

Piraeus


The environment in Europe – and elsewhere – is not in a good state. Climate change, biodiversity loss, resource management, the demographic time-bomb and poverty (the biggest pollutant of all) present challenges that are far from being adequately answered. The EU Directive on environmental liability tries to introduce a mechanism in Europe, according to which the impaired environment is restored and remediated, based on the idea that the polluter shall pay. The present book is the first thorough and detailed legal comment on this instrument.

The book describes, in fifteen chapters, origin, content, application problems, and future perspectives of Directive 2004/35/EC on environmental liability. The authors come, in almost even parts, from the United States and from Europe (Belgium-Netherlands, UK and Italy), and are, in almost even parts, lawyers and economists/scientists. Besides the editorial work, Bergkamp himself co-authored seven and Goldsmith five chapters.

A first section deals with scope, substance and procedure of the Directive. The Directive’s legal background is explained (Van Calster and Reins), its basic principles are exposed (Brans) and its scope is developed (Bergkamp and Bergeijk). This is followed by a detailed description of the exceptions and defences under the Directive (Bergkamp and Bergeijk), the remediation system (Bigham, Gard, Monti and Pozzi), financial security (Bergkamp, Herbatschek and Jayanti), the national transposition of the Directive (Goldsmith and Lockhart-Mummery) and procedures under Member State law with regard to the Directive (Bergkamp and Van Wesembeek).

The second section deals with emerging issues and practices in the Directive’s application. Nicolette and co-authors deal with the experience with restoration of environmental damage, mainly referring to US examples and experience. Gard and Desvouges discuss technical and economic questions raised by the Directive. In Chapter 11 Goldsmith and co-authors make a number of case studies. As practical experience with the Directive’s application within the EU is very scarce, they use “hypothetical case studies” where they discuss in detail the defence possibilities in case of damage. The following chapter (Goldsmith and others) tries to develop
emerging best practices in the application of the Directive, again more from a theoretical point of view than from practical experience within the Member States.

Section III looks at the Directive’s effects in practice (Faure and De Smedt), at sanctions and enforcement (Bergkamp and others) and at practice today and the path forward (Bergkamp and Goldsmith).

The different contributions are, without exception, of high quality. the authors know their area of work and are able to convey useful, practical and concrete information. The know-how of US authors, for example on natural resource damage or during the discussion of (hypothetical) case studies is valuable and gives important indications on how to proceed with cases under the Directive. The contributions are well documented, easy to read and written in a sober style. The book contains a table of cases, a list of legislative texts quoted and a useful index of key words; it has no list of literature that was used.

As the Directive was transposed with some delay into the national legal order of most Member States, and as cases where the provisions of the Directive were applied in practice are rare, the contributions are less convincing where they discuss transposition issues and question practical application. This refers to chapters seven and eight on transposition and on national procedures, but also to chapter twelve on emerging best practices.

The book concentrates on the text and the interpretation of the Directive itself. It does not try to explain the Directive’s transposition into the legal order of any of the Member States, which is a good approach. Occasionally, one has the impression that the book tries to be a guide to administrative authorities which deal with liability questions, and to companies confronted with claims for remediation. This point becomes very clear in the strong plea from the two editors in the final chapter to foster cooperation between government authorities and industrial companies in the application of the Directive and to “jointly promote consistency” in the Directive’s application (para 15.30). Civil society, environmental organizations and victims’ groups are obviously not considered to be stakeholders that should take part in the work on implementation of the Directive.

Faure and De Smedt state in paragraph 13.51 that it is the Directive’s objective to prevent and restore environmental damage. In contrast to that, the two co-editors argue in paragraph 15.33 that implementation of the Directive will be a success “if it reduces the total cost of environmental incidents, including the cost of prevention, case management, and restoration”. The difference between the two conclusions is remarkable: clearly, the Directive was adopted to improve the protection of the environment and not to reduce the costs for polluters in cases of incidents. But the book more reflects the co-editors’ approach than that of Faure and De Smedt. Therefore, it is only logical that the majority of contributions adopts a clear position of defence lawyers: it is not their objective to optimize the protection of the environment. This bias in favour of potentially liable persons is found in numerous small comments, observations and remarks, particularly, of course, in the chapter on defences and exceptions, but not limited to that Chapter.

This leads to the more general observation: the book does not discuss the state of the environment in Europe, its slight and progressive degradations and the question whether Directive 2004/35 is an instrument that is capable of contributing to stop or slow down this process. The – modest – rights of natural or legal persons to ask for environmental remediation and to take, under certain conditions, court action against the refusal of public authorities to act (Arts. 12 and 13 of the Directive), are hardly more than mentioned (paras. 7.35, 8.14, 8.36 et seq.). And the different authors hardly discuss the weakness of the Directive, its lacunae and deliberate omissions and its rather limited possibilities of effectively protecting the environment. They know that Article 18 of the Directive suggests its review in 2014, but do not discuss ways to make the Directive more effective. It does not occur to them that the small number of practical cases so far demonstrates the lack of effectiveness of the Directive. In view of the authors’ background, though, they might not be the most legitimate proponents of environmental protection.
Despite these rather basic objections to the approach chosen by the book, I recommend its use, in particular for public authorities and for industrial stakeholders. It gives a good overview of the Directive’s provisions, the rights and obligations of polluters and of public authorities and is detailed, complete and clear.

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It is clearly the generally accepted view that intellectual property law has been the object of many European developments, be it the single market, harmonization directives and regulations or Council of Europe initiatives such as the EPC. But all too often these developments are studied in isolation and attention is paid to the “practical” impact on the intellectual property rights concerned. This collection of essays is an attempt to bring all these together, but it also does far more. It starts at the other end of the spectrum and looks at whether there is or are an overarching concept or concepts of Europeanization at work here. Once that task has been accomplished, an even more far reaching question is asked: whether we are moving towards a European legal methodology, at least within the intellectual property field. The editors have assembled an outstanding group of contributors; this was really a pre-requisite in order to have a chance of bringing this ambitious endeavour to a successful and rich conclusion.

Once the methodology and the context are out of the way in Chapter one, Chapter two puts in place another essential introductory building block. It provides, in a descriptive manner, a comprehensive overview of European harmonization measures in intellectual property, irrespective of their source or of their successful implementation in practice.

What emerges even already from such a descriptive analysis is that Europe has adopted very different models and approaches on this path towards the harmonization of intellectual property over the years and depending on the institutions and IP rights involved. Part II starts the in-depth analysis by looking closely at the models and approaches that have been used in relation to patents, copyright and trademarks respectively. With regard to patent law, what is striking is that there was an early drive towards harmonization of European law through the European Patent Convention. National patent laws and national patents remained in place, but the substantive law was harmonized and there was also the significant addition of a “European patent” by way of a single application and examination, resulting in a bundle of national patents. The role of the European Patent Office must not be underestimated. The move to a truly Unitary Patent has, as we all know, been cumbersome and lengthy, but such a single patent for (most of) the EU could make the whole model competitive in a way in which it never was when there was merely a choice between the various national patents and the European Patent as a bundle of national patents. Copyright has had a very different approach. Most of the directives have dealt in a vertical way with specific aspects of copyright and there are only a couple of horizontal directives that have emerged in recent years. The process has been particularly piecemeal, but we have now reached a critical threshold and the question needs to be asked whether we need to move on from harmonized national laws that retain their differences to a true harmonization of European copyright law, with a single copyright act or even a single European copyright. Trade marks are in a sense the easy example: there has been a full scale harmonization of national law by means of a directive, and a single Community Trade Mark, administered by a single office in the shape of OHIM, was put in place by means of a regulation. The word “easy” is however strongly qualified by the endless list of cases, before both the General Court and the ECJ, and by the critical attitude which both legal scholars and legal practitioners take to these decisions.

Part III of the book then looks at the impact of general EU law on intellectual property and one thinks immediately of the impact of competition law and of the free movement and single