

Legal Issues

Bernhard A. Koch
European Centre of Tort and Insurance Law

Co-Extra
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Interplay of Legal Norms

- International norms

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Interplay of Legal Norms

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- European norms

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- EU norms
- National norms

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Interplay of Legal Norms

- International norms
- European norms
- EU norms
- National norms
- Individual contracts

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Interplay of Legal Norms

- Cartagena Protocol (Lugano Convention)
- Directive 2001/18/EC
- Loi n° 2008-595
- Distribution agreement

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Interplay of Legal Norms

- Higher-ranking norms set the limits for lower-ranking norms
- If there is no explicit provision, this does not mean that there is no rule

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Interplay of Legal Norms

- Proactive norms
 - Ex ante steering of conduct
- Reactive norms
 - Redress for the consequences of some activity ex post

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Interplay of Legal Norms

- Proactive norms
 - permission/license
 - buffer zones
 - tolerance levels
- "Rules of the game"
 - competent courts
 - applicable law
- Reactive norms
 - Liability rules
 - contractual liability
 - delictual liability

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Liability in Particular

- GM farming may cause losses ...
 - in case of admixture with non-GM products
 - to conventional or organic farmers
 - to distributors
 - if a GM product turns out to have negative health effects
 - to consumers
 - to food or feed producers
 - to biodiversity
 - ...
- Even mere fear of future harm may lead to a loss itself

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Liability in Particular

- GM farming may cause losses
- Who shall pay the bill?
 - Traditionally: The loss lies where it falls.
 - Only if there is good reason to shift the loss onto someone else will the latter have to indemnify the immediate victim
 - If so, the immediate victim will be satisfied, but what about the payor?

⇒ The potential for harm and the consequences linked to it are crucial determinants of true coexistence.

B.A. Koch: Liability and Redress Mechanisms

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Liability in Particular

- Different liability regimes
- Despite common core fundamentally different approaches in detail with effect on outcome:
 - Compensable loss
 - Causation
 - Reason for liability
 - ...

B.A. Koch: Liability and Redress Mechanisms

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Liability in Particular

- ... and all this overlapped with differing regulatory backgrounds:
 - isolation distances
 - licensing
 - notification
 - ...

B.A. Koch: Liability and Redress Mechanisms

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Liability in Particular

- ... and all this overlapped with differing policy objectives:
 - General GMO attitude affects applicable liability regime

B.A. Koch: Liability and Redress Mechanisms

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Liability in Particular

- ... and all this overlapped with potential contractual deviations:
 - Parties may agree on stricter standards than required.

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Coexistence of Liability Rules?

- Tort law can offer solutions, but do we want them?
- The insurance industry does not yet seem to be prepared to step in.
- In a comparative perspective, existing approaches are diverse and lead to different outcomes depending on the legal system (and its attitude towards GM farming).
- Such diversity does not necessarily call for harmonization, though.
- The regulatory framework for coexistence is crucial also for an *ex post* analysis if damage is caused.

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