



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.4.2005
COM(2005) 170 final

2003/0107 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**Common Position of the Council on the adoption of a Directive of the European
Parliament and of the Council on the management of waste from the extractive
industries**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2003)319 final – 2003/0107 COD):	2 June 2003
Date of the opinion of the European Economic and Social Committee:	11 December 2003.
Date of the opinion of the European Parliament, first reading:	31 March 2004.
Date of adoption of the common position:	12 April 2005.

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the Proposal is to establish minimum requirements in order to improve the way in which waste from the extractive industries is managed. The two main technical aims of the proposed Directive are:

- to minimise the environmental and human health effects of polluted drainage from waste management facilities (heaps and tailings ponds), which, due to the large volumes and characteristics of waste involved, have the potential to create very long-term environmental impacts persisting well after both the facility and the associated mine or quarry have been closed; and
- to prevent, or minimise the impacts of, accidents, and in particular to ensure the long-term stability of tailings dams and ponds, given that dam bursts have the potential to create widespread environmental damage, including threats to human life.

The objectives of the Proposal are to be achieved through measures based on Best Available Techniques and covering the planning, licensing, operation and eventual closure and after-care of waste management facilities associated with the extractive industry, with a particular emphasis on the stability of such facilities and the prevention of water and soil pollution.

3. COMMENTS ON THE COMMON POSITION

3.1 General comments

The Commission accepted in full, in part or in principle 46 of the 74 amendments proposed by the European Parliament at its first reading. 41 of these amendments have now been incorporated, either verbatim or in spirit, in the common position.

The Commission accepted all the amendments that offer better legal clarity to the text, improve the scope of the Proposal in terms of the range of materials covered, promote long-term safe operation of waste facilities by tightening up in particular the closure and after-care provisions, and address pollution from historic sites.

The Commission rejected in particular amendments that are overly prescriptive and detailed or extend significantly the scope of the Proposal.

The Council has to a large extent taken account of the Parliamentary amendments and has made a number of further changes. Whereas the Commission would have preferred a broader scope for the Directive, avoiding several possibilities for derogations in particular insofar as non-hazardous non-inert waste is concerned, it considers that the Common Position does not, as a whole, alter the approach and aims of the Proposal and can thus support it.

3.2 Detailed comments

3.2.1. Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position

The following amendments that were accepted by the Commission in full, in part or in principle, are also to be found in the common position: Amendments 2, 3, 5, 6, 7, 11, 12, 13, 14, 16, 17, 21, 25, 27, 28, 29, 30, 31, 32, 35, 37, 39, 44, 47, 50, 51, 52, 57, 59, 60, 63, 66, 67, 70, 71, 72, 75, 76, 86, 93, 98.

3.2.2. Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position

Amendments 4 and 8 propose to delete text that provides useful clarifications. It was therefore necessary to maintain this text.

Amendments 9, 90, 24, 38, 53, 61 and 64 propose additions that were felt to be unnecessary as most of them are covered, explicitly or implicitly, by provisions elsewhere in the current text.

Amendments 20 and 88 are of a linguistic nature and were not considered necessary.

Amendments 22, 34, 40, 41, 48, 55, 56 and 74 proposed additions that were considered too detailed to be included in a directive.

Amendments 43, 45 and 65 extend provisions addressing backfilled waste to the excavation void itself, which falls outside the scope of the Proposal.

Amendments 58, 62 and 73 add references to other Community legislation which applies anyhow as appropriate.

Amendment 69 modifies the wording taken from the UN Convention on Transboundary Environmental Impact Assessment (Espoo Convention).

3.2.3. *Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position*

Amendment 19 was considered to be of a linguistic nature.

Amendment 26 puts emphasis on options for the management of waste that need to be considered in the waste management plan. Although the Commission felt that the suggested addition would add clarity to the text, the Council found that this would be too prescriptive to include.

Amendment 42 suggests that provisions applying to waste placed back in excavation voids should also cover other production residues. The Commission accepted this addition, with a slightly different wording, in order to avoid any legal uncertainty for backfilled material. However, the Council considered this as being a non-waste issue and therefore falling outside the scope of this Proposal.

Amendment 46 identifies protected areas as an important factor to be taken into account when determining the location of a waste facility. However, the Community requirements on nature protection areas have anyhow to be taken into account as appropriate.

Amendment 54 specifies that measures to be taken for closed waste facilities will aim at compliance with Community environmental standards. Such standards apply however anyhow and this addition was not considered necessary.

3.2.4. *Parliamentary amendments not accepted by the Commission and incorporated in full, in part or in principle in the common position*

The Council considers Amendments 36 and 68 to be reflected in the common position. The Commission did not consider it necessary to accept these amendments as it believes that their content was already included in the Commission's proposal.

3.2.5. *Additional changes made by the Council to the Proposal*

Recitals

Several changes aim at adjusting the text to reflect the various changes made throughout the articles. Furthermore, the following changes are highlighted:

In Recital 4 it is clarified that waste produced during the pre-production development stage is also to be covered by the waste definition.

In Recital 6 a reference to the definition of extractive waste is added.

In Recital 8 it is clarified that other waste legislation shall apply as appropriate to non-extraction related waste generated, as well as to extractive waste transported to a location that is not an extractive waste facility.

New Recital 11 was added to clarify that waste from the extraction of materials used for their radioactive properties is not covered by the Directive if it is already covered by legislation under the Euratom Treaty. The Commission highlights that the combined reading of Recital 10 and 11 implies that such waste is not to be covered by this Directive insofar as there is other Community legislation adopted pursuant to the Euratom Treaty that pursues the same environmental objectives and properly covers the aspects dealt with by this Directive.

New Recital 16 was added to clarify that the classification of waste facilities into Category A is not to be made solely on the basis of risks to health and safety of workers since this issue is covered by other relevant Community legislation.

New Recital 23 was added to emphasise the need for setting an appropriate after-care period for monitoring and control of Category A facilities.

New Recital 37 was added to encourage Member States to show the correlation between the Directive and their national implementing measures.

Articles

In Article 1 emphasis is added to the protection of water, fauna, flora, soil, air, and landscape.

In Article 2 the injection of water and re-injection of pumped groundwater were exempted from the scope in an analogous way to Directive 2000/60/EC. The limited provisions applying to inert waste (and which now, following Amendment 98, cover also unpolluted soil and waste from prospecting operations) were extended to include the full provisions of Article 5. Waste from peat extraction was also made subject to these limited provisions. However, it was specified that Category A facilities of such waste shall be subject to the full provisions of the Directive. The possibility was given to competent authorities to reduce requirements applying to non-hazardous waste from prospecting, as well as to unpolluted soil and waste from peat extraction. Furthermore, a new category of non-hazardous non-inert waste was created and Member States may exempt it from provisions on financial guarantees (Article 14) and on notification of events affecting stability (Art. 11(3) and 12(5) and (6)), unless in a Category A facility as above.

In Article 3 definitions of ‘unpolluted soil’, ‘off-shore’, ‘prospecting’ and ‘substantial change’ were added. Partially drawing on Amendment 21, a differentiated approach to the definition of ‘waste facility’ according to risks involved by each type of waste was introduced, while it was specified that this definition also includes excavation voids into which waste is replaced for reasons other than rehabilitation or construction. It was specified that the responsibility of an operator also covers the temporary storage of waste.

In Article 4 the general requirements were extended to cover all management of waste, including during temporary storage, and the full Article 4 of Directive 75/442/EEC was incorporated.

In Article 5 the requirements on classification of waste facilities were moved from Article 7 to become part of the waste management plan. A new paragraph was added requiring approval of the plan by the competent authority.

In Article 6 it was specified when the various major-accident arrangements need to be available.

In Article 9 the classification system for waste facilities was simplified and the relevant criteria set out in Annex III were adjusted to the definition of ‘major accident’.

In Article 11 several other elements to be taken into account for the location of waste facilities were added.

In Article 13 the Cyanide concentration limit values for new facilities were reduced to the most stringent level.

In Article 14 it was specified that the financial guarantees may also include equivalent systems. The Commission highlights that any such system, whatever form it takes, should ensure the availability of adequate funds at any given time to carry out the necessary rehabilitation work in case of insolvency or “walk away” practice of the operator. The Environmental Liability requirements were included in a separate article which specifies that the provisions of the relevant directive shall apply to all management of extractive waste.

In Article 20 priorities were set for the tasks to be developed through committee and the interpretation of the definition of inert waste was added to these tasks.

In Article 22 a new provision was added for waste facilities that have stopped receiving waste on the date of transposition of the Directive but have not completed their closure procedures yet.

Annexes

In Annex III the first indent has been reworded to establish a direct link to the definition of ‘major accident’ as set out in the Proposal.

4 CONCLUSION

The changes introduced by the Council help to clarify the terms of the Proposal and, while also restricting its scope to some extent, do not detract from its overall thrust. The Commission can therefore support the Common Position.