



European Economic and Social Committee

NAT/193
Waste management from
extractive industries

Brussels, 11 December 2003

OPINION

of the European Economic and Social Committee

on the

**Proposal for a Directive of the European Parliament and of the Council on the management
of waste from the extractive industries**

COM(2003) 319 final – 2003/0107 COD

On 20 June 2003 the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the

Proposal for a Directive of the European Parliament and of the Council on the management of waste from the extractive industries

COM(2003) 319 final – 2003/0107 COD.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 November 2003. The rapporteur was **Ms Le Nouail Marlière**.

At its 404th plenary session of 10/11 December 2003 (meeting of 11 December 2003), the European Economic and Social Committee adopted the following opinion by 31 votes in favour, 1 vote against without abstentions:

1. Introduction

1.1 The occurrence of several high profile environmental disasters and mining accidents in recent years underlines the need to develop a coherent policy at EU level aimed at preventing these disasters from occurring.

1.2 The 1998 toxic spill in Spain's Donana wetlands and the Baia Mare cyanide spill which polluted the whole of the Danube River are just two of the more recent examples of environmental disasters caused by accidents involving the release of tailings from unstable lagoons storing wet sludge from mining.

1.3 Because of its composition or volume and the way it is stored, waste from extractive industries (mining and quarrying) can pose a serious threat to the environment and human health if not properly managed.

1.4 Waste from the extractive industries represents one of the largest waste streams in the EU, representing approximately 29% of the total waste generated and an annual volume of 400 million tonnes.

1.5 Mining waste is subject to the general provisions of the Waste Framework Directive (75/442/EEC) and facilities for the disposal of waste from extractive industries are covered by the Landfill Waste Directive (1999/31/EC). It is also covered in other Directives relating to mining waste more specifically, including:

- Council Directive 75/442/EEC of 15 July 1975 on waste (waste framework directive);
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (landfill directive);

- Council Directive 96/61/EEC of 24 September 1996 concerning integrated pollution prevention and control (IPPC Directive);
- Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso II Directive);
- Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 (the EIA Directive).

These directives are discussed in the explanatory memorandum. This analysis shows that the legal provisions contained in them do not regulate the problems of managing waste from the extractive industries in an appropriate manner.

2. Gist of the Commission proposal

2.1 In addition to the revised Seveso II Directive on the control of major industrial accidents and a Best Available Techniques (BAT) document on tailings and waste rock, the Commission proposal seeks to ensure the sound management of extractive waste throughout the EU.

2.2 Specifically, it aims to improve the ways in which waste from the extractive industries is managed, by setting minimum requirements and addressing the environmental and human health risks that can arise from the treatment and disposal of such waste.

2.3 The scope of the proposed directive covers waste from all sectors of the extractive industry and focuses on the operational issues connected with waste management, prevention of soil and water pollution and the stability of waste management facilities (especially tailings lagoons).

2.4 The proposal lists conditions to be attached to operating permits in order to ensure that sufficient environmental and safety measures are in place in order for waste management facilities to receive authorisation. For example:

- a) waste has to be classified before disposal;
- b) operators of waste management facilities should draw up closure plans in order to form an integral part of the overall operating plan;
- c) effective monitoring is essential during both the operational and the after-care phases.

2.5 The proposal contains an obligation to provide for an appropriate level of financial security to reinforce the "polluter pays principle" – this includes ensuring that sufficient funds are available to leave waste management facilities in a satisfactory state after closure if, for example, a company goes into administration.

2.6 Given that many issues related to waste from the extractive industries are already regulated in most Member States, the proposal aims to set minimum standards at EU level, in order to create a level playing field for the management of extractive industry waste.

3. General comments

3.1 The Committee welcomes the Commission's attempts to set EU-wide requirements regarding the safe and sustainable management of mining waste and agrees that the collapse of heaps and dams can have a serious impact on both the environment and human health and safety.

3.2 The Committee draws attention to the fact that extractive industries are often located in areas needing industrial regeneration and therefore draws the Commission's attention to the danger that setting stricter standards might have in making an already weak economic sector even weaker. The Committee therefore calls on the Commission to assess the impact on employment not only in terms of additional constraints, but also in terms of needs generated by the operation and maintenance of waste management facilities. The landfill directive lays particular stress on the need to properly train the staff of landfill operators in closure and after-care procedures. The Committee calls for the inclusion of corresponding provisions in this proposal, in line with the characteristics of the site concerned.

3.3 The Committee applauds the fact that the proposal focuses on the dangers that accidents involving mining waste can pose not only to the environment and human health, but also to the economic and social fabric of society. In this way, the Committee feels that the proposal is consistent with the three pillars of sustainable development¹.

3.4 While welcoming the present proposal, the Committee believes that the Commission should evaluate the reasons why existing EU legislation on waste has not been successful in preventing pollution from tailings lagoons and metal mining activities in general. The Committee welcomes this proposal for a specific additional instrument and hopes that it will prevent the same mistakes being made again in an enlarged EU.

3.5 The Committee also believes that the legislative framework on the management of waste from extractive industries should also make use of relevant measures from Community environmental legislation relating to water protection and environmental liability including binding rules on liability for "biodiversity damage" for all activities.

3.6 The Committee welcomes this proposal which consolidates better protection in law and determines the responsibilities of operators and public authorities.

3.7 The ECSC considers that the analysis of the consistency of the proposed directive with other EC acts should be a major part of the directive. The inclusion in Article 3 of the same definitions as used in Council Directive 75/442/EEC of 15 July 1975 on waste (waste framework directive) and in other EU acts suggests that the Commission has ensured such consistency. It would appear that all waste and waste treatment situations involving the extractive industries will be covered

¹ The Commission undertook a study on the costs of improving the management of mining waste, carried out by the Symonds Group, October 2001, prior to the entry into force of the provisions of the Landfill Directive.

by Community instruments after the adoption of this draft directive. However, it would also appear that, as far as waste from the extractive industries is concerned, the applicable provisions and their fields of application are scattered across different instruments, for instance:

- waste framework directive 75/442/EEC;
- Seveso II Directive 96/82/EC, Article 4 e) and f) amended with regard to chemical and thermal treatment operations;
- landfill directive 1999/31/EC for inert waste, field of application Art. 3 (2), indents 2 and 4.

The EESC therefore considers that the analysis of the consistency of the proposed directive with other EU acts should be both more important and more clear regarding transport² and storage times³. Moreover, the proposal should also cover waste stored during even short periods, but which build up over time on a single site.

4. Specific comments

4.1 While agreeing that national laws are organised differently from country to country, some "mining codes" having evolved historically around the notion that mining is of strategic importance for the country (coal, oil, etc.) and others on the basis of environmental legislation, the Committee notes that a distinction has deliberately not been made between open quarries and underground extraction sites. The Committee would, however, like to see a clearer definition of stripped soil and topsoil which are to be re-used and for them to be regarded as non-waste. The Committee has heard the Commission's explanation that it does not want to reconsider the definitions contained in the waste framework directive and the landfill directive and understands that, since stripped soil and topsoil are not intended for landfill but for reuse, they are not defined as waste in the present draft directive, that the definition of waste is a "functional" definition and not a "physical or chemical" definition⁴.

4.2 According to Article 2 of the proposal (*Scope*), "waste generated at an extraction or treatment site and transported to another location for the purposes of its deposit into or on to land" is

² Opinion CES 515/2002 on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, rapporteur **Mr Levaux**

³ Council Directive 1999/31/EC of 26 April 1999. The following are excluded from the definition of landfill:

- "facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, and
- storage of waste prior to recovery or treatment for a period less than three years as a general rule, or
- storage of waste prior to disposal for a period less than one year".

⁴ The definition taken into account for this proposal is the same as that for the waste framework directive 75/442 of 15 July 1975, based on the concept of "discarding waste", as stated in the Judgment of the European Court of Justice (Sixth Chamber) of 11 September 2003. *Avesta Polarit Chrome Oy*. Reference for a preliminary ruling: *Korkein hallinto-oikeus - Finland*. *C-114/01*

excluded from the scope of this directive. The EESC has misgivings about this solution. The question is: what arguments support the thesis that waste of a similar nature should not be subject to the same legal provisions solely because it is transported to another site?

4.3 The Committee agrees with the proposal in Article 5 that operators shall draw up a waste management plan for the treatment, recovery and disposal of extractive waste, but underlines the importance of ensuring that both the design and implementation of such plans are regularly monitored by the competent authorities in Member States. Such effective monitoring is central to the successful implementation of this Directive.

4.4 The Committee suggests that section 2 of Article 6 make provision to include the closure and post closure phase in the requirements for major accident prevention and information. This would be consistent with the general approach of the proposed Directive.

4.5 The Committee, while supporting the aims of Article 7 regarding the prerequisite for waste facilities to have a permit in order to operate, also urges the Commission to signal to Member States the dangers of applying this article too arbitrarily or bureaucratically. The Commission should bear in mind the economic and employment consequences of waste facilities being closed down in the event of minor infringements of the permitting requirements.

4.6 The Committee insists that the support of more people living in the vicinity is necessary to the implementation of the objectives of Community environmental policy. Although the draft directive is aimed at preventing the most serious accidents, it must be stressed that the management of the waste of the extractive industries in both present and future member countries has wider repercussions. This involves in particular the social concerns of workers exposed to waste, of inhabitants living in the vicinity, of people in the regions concerned, and people further away due to the possible effects of waste on air, soil and water. The Committee notes the Commission's desire to have integrated management and, to this end, thinks that the directive should explicitly provide for formal consultation of those NGOs "deemed to have such an interest" which work for the protection of the environment within the meaning of Article 2(5) of the Århus Convention adopted on 25 June 1998 and signed by the European Community and the social partners and workers organisations in particular.

4.7 The Committee takes note of the Commission's attempts in Article 10 to provide for certain measures pertaining to waste placed back in the excavation void, but believes that the appropriate measures mentioned in this Article should be expanded to ensure that the operator provides the Member State competent authority with information on:

- the layout of excavated voids (surface and/or subsurface);
- the quantity and quality of water encountered in the excavated voids during working (last two years minimum);

- predictions of the locations, quantity and impact of any future polluting discharges from the excavated voids to groundwaters and surface waters, and plans for mitigation/remediation of such discharges;
- proposals for monitoring the process of flooding of the voids, to provide early warning of the need to instigate mitigation measures identified under above.

4.8 The Committee notes that in the Commission's preparatory work during the drafting and adoption of the proposal, a requirement had been included for Member States to draw up a comprehensive public inventory of abandoned mining sites, but that this requirement has now been dropped from the proposal, given the added complexity presented by the accession of 10 new Member States to the EU in 2004 and the need for in-depth investigation and economic impact assessment required to implement this requirement feasibly. While Article 19 of the proposal obliges Member States to ensure that there is an appropriate exchange of technical and scientific information between Member States with a view to developing methodologies regarding the drawing up of inventories of closed waste facilities and the rehabilitation of those closed waste facilities, the Committee is not convinced that this approach is sufficient.

4.9 The Committee therefore urges the Commission to urgently establish a provisional list of abandoned mining and extractive sites that may give rise to health or environmental risk. This list should also apply to the ten new Member States and should not be delayed while methodological complexities are taken into account.

4.10 The Committee notes that the requirement for the Member State competent authority to receive a financial guarantee in Article 14, does not specifically mention who the guarantee is required from. While the requirement of such a guarantee from a specific waste facility would help implement the polluter pays principle, the ability of companies to meet this guarantee and the impact it may have on insurance premiums also needs to be more carefully detailed by the Commission.

Brussels, 11 December 2003.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Roger Briesch

Patrick Venturini