



**RECOMMENDATIONS
ON THE LEGAL AND REGULATORY SOLUTIONS AND
EFFECTIVE IMPLEMENTATION WITH REGARD TO
SUSTAINABLE AGGREGATE RESOURCES MANAGEMENT**

**BASED ON THE SYNTHESIS REPORT OF THE EUROPEAN
UNION COMMUNITY LEGISLATION**

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DISCLAIMER

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Conclusions and Recommendations

The European Union Community secondary legislation and policy initiatives

Issue Nr. 1

The legal development of the European Union is paved by the voluntary submission of pillars of national sovereignty of Member States under the Community interest by establishing a supranational legislation. The higher the thematic cover of the *acquis communautaire* (EU Community law), the higher is the level of the political, economical, and social integration. The extractive industry, including the primary aggregates mining, received specific treatment in the *acquis* with a low control on its environmental impacts by being excluded from the scope of major environmental directives. Occupational health and safety, and ensuring supply were covered by the legislation from the beginning but the Directive on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons is the only piece showing elements of a mineral policy.

In case of secondary aggregates the historical development shows similarities. There were relatively few legislative actions between the first Waste Framework Directive (75/442/EEC) and the turn of the century. The principles of re-use, recycling and recovery were published without further detailed provisions. In 1991 the Landfill Directive made it pronounced that landfilling is the ultimate avoidable waste management option, but it had an almost exclusive focus on the reduction of biodegradables, and the geotechnical sealing.

In the year 2000 this scenario changed dramatically. The environmental impacts by the Aznarcollar and Baia Mare accidents, and the developing new waste policy induced a series of converging actions. The European Waste Catalogue was issued, numerous Court of Justice rulings dealt with the legal interpretation of inert mining waste, the Seveso II Directive was amended, and the Environmental Liability Directive, the Mining Waste BREF, the EU Pollution Register, the Mining Waste Directive with implementing Commission Decisions, and the New Waste Framework Directive were adopted. This new wave of legislation was prepared carefully. Even a scrupulous crossover study like the present one could not discover legal discrepancies or significant gaps with regard to primary and secondary aggregates. However, the concise definition of aggregates is still lacking in the *acquis communautaire*, which fact may lead to legal suits in the future. »»»

Recommendation

An up-to-date legal terminology is needed for aggregates. It is proposed that „primary” aggregates shall be used for mineral commodities as sand, gravel,

crushed stone extracted for the primary purpose of being used as aggregate. All the rest of aggregates shall be defined as „secondary aggregates”, by being by-products, end-of-waste, recycled waste in the meaning of the new Waste Framework Directive. This is a legal approach; it is understood and accepted that the aggregate industry has been using terms like „natural”, „recycled”, „artificial” aggregates for a long time without a sign of misunderstanding. The transposition of the above terms into Member State legislation should be sped up.

Issue Nr. 2

The EU Treaties declare the prudent and rational use of natural resources to avoid their unconsidered exhaustion. In the last ten years Community policies were published on sustainable natural resources management, the life-cycle-approach, and raw materials supply. However, most of these policies were published as thematic strategies or communications, and have not reached the level of secondary legislation. The practical elements of the sustainability principle (i.e. life-cycle assessment, indicator approach, product-specific thresholds, fit-for-use applications, material- and energy-efficient solutions) seldom appear even in the recent legislation. »»»

Recommendation

The only remarkable piece of legislation which adopts the principle of sustainability and directly relevant to aggregates is the Commission Decision 2002/272/EC establishing the ecological criteria for the award of the Community eco-label to hard floor-coverings. It provides an example how a product-specific regulation applies a detailed and sophisticated methodology in order to comply with the holistic and integrated approach of sustainability. This can be a potential legal methodology governing the sustainable management of both primary and secondary aggregates extraction. It is recommended that product-specific eco-label and eco-award legislation should be extended to both primary and secondary aggregates production schemes.

Issue Nr. 3

The waste acquis is close to perfect and it is progressive by (a) being coherent for all waste streams; (b) providing incentive waivers for non-hazardous wastes; and (c) inventing and defining end-of-waste and by-product categories, thus reinforcing re-use, recycling and recovery. However, financial regulatory instruments are left to the Member States' authority, thus potentially leading to cross-border market turbulence and distorted competition among suppliers of different aggregate material suppliers.

Recommendation

Further amendment and progress of Community legislation might be needed on certain industrial and other waste streams that generate non-hazardous

aggregates, because the present focus is limited to construction and demolition waste. Efforts should be speed up to elaborate the specific end-of-waste and by-product criteria as required by the Waste Framework Directive as well.

Issue Nr. 4

The aggregate sector is not a polluting industry and it is out of the scope of the Integrated Pollution Prevention and Control (IPPC) Directive. »»»»

Recommendation

It could be in the interest of all stakeholders to elaborate a voluntary, sectorial, best-available-technique reference document on the best practices and acceptable quantitative emission thresholds of this primary and secondary raw material stream, not necessarily under the scope of the IPPC Directive.

Issue Nr. 5

Concerning the minerals extractive industries' waste management and related secondary aggregates production, the Mining Waste Directive (MWD) brought a breakthrough to this previously unregulated field in 2006. The deadline for the implementation and compliance with the rules of the MWD is coming in May 2012. The different interpretation of the scope (e.g., the recent red mud case in October 2010 in Hungary), and the delay in the elaboration of implementing technical guidelines on the Community level may cause turbulence in this sector. »»»»

Recommendation

For economic reasons, extractive companies are motivated to backfill their waste, and to sell their non-hazardous aggregate by-products and processed end-of-mine wastes. However, further awareness raising among mining companies and authorities is recommended on the national level for the complete understanding of the mine waste management options provided by the directive. The technical guidelines to be elaborated in the course of the MWD may include provisions on how mine waste management corresponds to aggregate reserves accounting at least in terms of volumes extracted/back-filled, etc..

Issue Nr. 6

Mining is increasingly influenced by other competing land uses, such as urban development, agriculture, and nature conservation. Raw materials are essential for the sustainable functioning of modern societies. Access to and affordable mineral raw materials are crucial for the sound functioning of the EU's economy. The lack of a Community minerals policy regulation and legislation on spatial planning (and land-use planning) are the other major legislative gaps that overarchingly rule the whole primary aggregate legislation conflict map. Aggregate extraction is among the low-priority competing land-using activities in most Member States, which

leads to the „sterilization” of known resources, eliminating the chances of future generations. »»»

Recommendation

A balanced consideration of economic, environmental, and social aspects to ensure the sustainable practices of aggregates industry is needed in the frame of a coherent Community mineral policy. Such a policy might be inspiring for the SEE region where aggregates issues are crucial. Forward planning is important for the whole industry and, due to this awareness, a few European countries have adopted strategic mineral plans. In developing the Raw Materials Initiative into a full legal format, primary aggregates should receive the same attention as the so-called „critical minerals” enjoy at present. Such legislation should also cover the problem issue of „non-mining” forms of aggregate extraction, namely, activities performed under declared purposes and permits other than mineral extraction, such as „landscape management”, „water works”, extraction for environmental remediation, etc. A new specific reference on national mineral plans in the Strategic Impact Assessment Directive may also reinforce the weight and valuation of the primary aggregate commodity and its occurrences of resources and reserves.

Issue Nr. 7

With special regard to the major barriers faced by the primary aggregate extractive industry, the Natura 2000 framework must be mentioned. The inhomogenous implementation of this policy in the different Member States may lead to the distortion of market conditions, and to transboundary exportation of environmental impacts. The related guideline issued by the European Commission in 2010 might not significantly improve the above unfavourable situation.

Recommendation

According to aggregate supply calculations, even a 100 % recycling ratio of non-hazardous wastes would cover only the 15 % of the total demand for aggregates. Therefore, the access to primary aggregate resources should be made feasible by closely monitoring the due implementation of NATURA 2000 by the competent Community bodies without endangering the achieved level of biodiversity conservation.

Issue Nr. 8

The complete harmonization of the Environmental Liability Directive may pose an additional financial burden on aggregate companies. Concerning intentional offences against the environment, a relevant piece of legislation is in place (Decision 2003/80/JHA on the protection of the environment through criminal law) according to which unlawful discharges, emissions, disposals of hazardous substances, waste, and ionising radiation which causes substantial damage to quality of soil qualify as intentional offences. »»»

Recommendation

Legal sanctions could be established against illegal mining in the Community law, similar to environmental offences, on the basis of criminal action against sustainable natural resource management. It should also direct member states to establish their aggregates inventories and policies.