

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0236/2005

15.7.2005

*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a directive of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC
(16075/1/2004 – C6-0128/2005 – 2003/0107(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Jonas Sjöstedt

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Council common position for adopting a directive of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC
(16075/1/2004 – C6-0128/2005 – 2003/0107(COD))**

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16075/1/2004 – C6-0128/2005),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2003)0319)²,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A6-0236/2005),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

Council common position	Amendments by Parliament
Amendment 1 RECITAL 8	
(8) Accordingly, the provisions of this Directive should not apply to those waste streams which, albeit generated in the course of mineral extraction or treatment operations, are not directly linked to the extraction or treatment process, e.g. food waste, waste oil, end-of-life vehicles, spent batteries and accumulators. The management of such waste should be subject to the provisions of Directive 75/442/EEC or of Council Directive 1999/31/EC of 26 April 1999 on	(8) Accordingly, the provisions of this Directive should not apply to those waste streams which, albeit generated in the course of mineral extraction or treatment operations, are not directly linked to the extraction or treatment process, e.g. food waste, waste oil, end-of-life vehicles, spent batteries and accumulators. The management of such waste should be subject to the provisions of Directive 75/442/EEC or of Council Directive 1999/31/EC of 26 April 1999 on

¹ Texts adopted, P5_TA-PROV(2004)0240.

² Not yet published in OJ.

the landfill of waste or any other relevant Community legislation, ***as is the case for waste generated at a prospecting, extraction or treatment site and transported to a location that is not a waste facility according to this Directive.***

the landfill of waste or any other relevant Community legislation.

Justification

To be consistent with Article 2 which does not allow for such an exemption.

Amendment 2
RECITAL 9

(9) Nor should this Directive apply to waste resulting from the offshore prospecting, extraction and treatment of mineral resources or to the injection of water and re-injection of pumped groundwater, while inert waste, non-hazardous prospecting waste, unpolluted soil and waste resulting from the extraction, treatment and storage of peat should be covered only by a limited set of requirements due to their lower environmental risks. ***For non-hazardous non-inert waste, Member States may reduce or waive certain requirements. However, these exemptions should not apply to Category A waste facilities.***

(9) Nor should this Directive apply to waste resulting from the offshore prospecting, extraction and treatment of mineral resources or to the injection of water and re-injection of pumped groundwater, while inert waste, non-hazardous prospecting waste, unpolluted soil and waste resulting from the extraction, treatment and storage of peat should be covered only by a limited set of requirements due to their lower environmental risks.

Justification

To be consistent with changes to Article 2.

Amendment 3
RECITAL 11

(11) In accordance with Directive 75/442/EEC and pursuant to Articles 31 and 32 of the Treaty establishing the European Atomic Energy Community (Euratom), the objective of management of waste generated by the extraction of materials used for their radioactive

deleted

properties is to ensure protection of workers, the public and the environment against dangers stemming from ionizing radiations. This Directive is not applicable to the management of such waste where it is already covered by legislation based on the Euratom Treaty.

Justification

A clarification of the situation for radioactive waste is already given in recital 10.

Amendment 4
RECITAL 14

(14) Member States should ensure that operators in the extractive industry draw up appropriate waste management plans for the treatment, recovery and disposal of extractive waste. Such plans should be structured in such a way as to ensure appropriate planning of waste management options with a view to minimising waste generation and its harmfulness, and encouraging waste recovery. Moreover, waste from the extractive industries should be characterised with respect to its composition in order to ensure that, as far as possible, such waste reacts only in predictable ways.

(14) Member States should ensure that operators in the extractive industry draw up appropriate waste management plans for the **prevention**, treatment, recovery and disposal of extractive waste. Such plans should be structured in such a way as to ensure appropriate planning of waste management options with a view to minimising waste generation and its harmfulness, and encouraging waste recovery. Moreover, waste from the extractive industries should be characterised with respect to its composition in order to ensure that, as far as possible, such waste reacts only in predictable ways.

Justification

The greatest potential for waste prevention and minimisation in quantities and harmfulness lies in the choices made regarding the design, evolution and choice of prospection, extractive and ore treatment practices from which the wastes are generated as well as the design and choices of the waste management practices.

Amendment 5
RECITAL 23

(23) It is necessary to establish monitoring

(23) It is necessary to establish monitoring

procedures during the operation and after-closure of waste facilities. ***An after-closure period for monitoring and control of Category A waste facilities should be laid down proportionate to the risk posed by the individual waste facility, in a way similar to that required by Directive 1999/31/EC.***

procedures during the operation and after-closure of waste facilities.

Justification

There is no “walk-away” solution after the closure of an extractive waste facility. There are clear rules in the Directive for the after-closure period which apply to all waste facilities (see Article 12).

Amendment 6 RECITAL 25

(25) Member States should require operators of the extractive industries to apply monitoring and management controls in order to prevent water and soil pollution and to identify any adverse effect that their waste facilities may have on the environment or on human health. In addition, for the purposes of minimising water pollution, the discharge of waste into any receiving body of water should comply with Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. Furthermore, concentrations in tailings ponds of cyanide and cyanide compounds from certain extractive industries should, in view of their harmful and toxic effects, be reduced to the lowest possible levels, using best available techniques. Maximum concentration thresholds should be set accordingly and, in any case, in line with the specific requirements of this Directive to prevent such effects.

(25) Member States should require operators of the extractive industries to apply monitoring and management controls in order to prevent water and soil pollution and to identify any adverse effect that their waste facilities may have on the environment or on human health. In addition, for the purposes of minimising water pollution, the discharge of waste into any receiving body of water should ***be prohibited unless it is demonstrated a priori to*** comply with Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. Furthermore, concentrations in tailings ponds of cyanide and cyanide compounds from certain extractive industries should, in view of their harmful and toxic effects, be reduced to the lowest possible levels, using best available techniques. Maximum concentration thresholds should be set accordingly and, in any case, in line with the specific requirements of this Directive to prevent such effects.

Justification

Change needed for coherence with Article 13, paragraph 4. The Directive allows direct discharges of waste from the extractive industries to continental, coastal and marine waters. However, these must be explicitly prohibited in line with obligations from the Treaty (e.g. prevention of damage at source); from existing Community environmental legislation (e.g. the Waste and the Water Framework Directives); and from Annex II to the OSPAR Convention. Further, compliance with the Water Framework Directive should not be ensured a posteriori but a priori by preventing "deterioration".

Amendment 7 RECITAL 26

(26) The operator of a waste facility servicing the extractive industries should be required to lodge a financial guarantee or equivalent in accordance with procedures to be decided by the Member States ensuring that all the obligations flowing from the permit will be fulfilled, including those relating to the closure and after-closure of the site. The financial guarantee should be sufficient to cover the cost of rehabilitation of the *site* by a suitably qualified and independent third party. It is also necessary for such a guarantee to be provided prior to the commencement of deposition operations in the waste facility and to be periodically adjusted. In addition, in accordance with the polluter pays principle and with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, it is important to clarify that an operator of a waste facility servicing the extractive industries is subject to appropriate liability in respect of environmental damage caused by its operations or the imminent threat of such damage.

(26) The operator of a waste facility servicing the extractive industries should be required to lodge a financial guarantee or equivalent in accordance with procedures to be decided by the Member States ensuring that all the obligations flowing from the permit will be fulfilled, including those relating to the closure and after-closure of the site. The financial guarantee should be sufficient to cover the cost of rehabilitation of the ***land affected by a waste facility*** by a suitably qualified and independent third party. It is also necessary for such a guarantee to be provided prior to the commencement of deposition operations in the waste facility and to be periodically adjusted. In addition, in accordance with the polluter pays principle and with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, it is important to clarify that an operator of a waste facility servicing the extractive industries is subject to appropriate liability in respect of environmental damage caused by its operations or the imminent threat of such damage.

Justification

The definition of “rehabilitation” in the Council text makes it crystal clear that this is to treat “the land affected by a waste facility”. This change is needed to ensure that the guarantee covers rehabilitation of all land affected by the waste facility, as was the case in the original proposal of the Commission

Amendment 8 RECITAL 31

(31) It is necessary for Member States to ensure that an inventory of closed **waste facilities** located on their territory **which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment is carried out.**

(31) It is necessary for Member States to ensure that an inventory of closed **sites** located on their territory **is drawn up, since these sites often pose a very high environmental risk. The Member States and the Community have a responsibility for rehabilitating abandoned sites likely to cause serious negative environmental impacts. It should therefore be possible to use Structural Funds and other relevant Community funding in order to draw up inventories and implement measures to clean up such facilities.**

Justification

Reinstates amendment 6 of first reading. There is currently no EU-wide reliable information about the number and location of closed/abandoned waste facilities. Lack of proper closure procedures, if any, at the time of closure makes already closed or abandoned waste facilities an unmanaged burden of the past, veritable “time bombs”, with accidents waiting to happen on top of the everyday pollution they cause. In addition, the Water Framework Directive objectives of “no (further) deterioration” of water status and of achieving good ecological and chemical status” in all waters by 2015 will not be achieved unless these closed/abandoned extractive waste sites are dealt with and this Directive could assist fulfilling such goals.

Amendment 9 RECITAL 37 A (new)

(37a) In view of the significance of this Directive for environmental protection, it is desirable that newly joining Member States should already take it into account during the pre-accession phase and should apply it

consistently from the date of their accession,

Justification

This insertion is desirable in connection with the accession of Romania and Bulgaria in 2007 and the planned investment in gold mining at Verespatak (Rosia Montana) in Romania.

Amendment 10
ARTICLE 1, PARAGRAPH 1 A (new)

With a view to the consistent application of Article 6 of the Treaty, environmental protection requirements must be integrated into the implementation of Community policies and activities with a view to promoting sustainable development.

Justification

Reinstates amendment 9 from first reading.

Amendment 11
ARTICLE 2, PARAGRAPH 3, SUBPARAGRAPH 1

3. Inert waste ***and unpolluted soil*** resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries ***and waste resulting from the extraction, treatment and storage of peat*** shall not be subject to *Articles 7, 8, 11(1) and (3), 12, 13(5), 14* and 16, unless deposited in a Category A ***waste*** facility.

3. Inert waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries shall not be subject to Articles 11(1), 13(5), and 16. ***Unpolluted soil related to any type of extraction and waste resulting from the extraction, treatment or storage of peat shall not be subject to the provisions of Articles 7, 8, 11(1) and (3), 12, 13(5), 14 and 16. In all cases, this will apply unless the above waste is*** deposited in a Category A facility.

Justification

This amendment brings back the idea expressed in the first reading that this type of waste should be dealt with in a limited number of Articles, but not in the sense that they should all be seen as equal, given that they have very different potential effects. There is no reason for inert waste to be chemically 'dangerous' i.e. directly poisonous or toxic. However, this type of waste can affect people's health in the same way as it affected freshwater species of flora and fauna, even to the extent of being fatal. The nature of its impact is principally determined by the volume produced, and non-dangerous inert waste constitutes the largest part of the total waste produced in the EU. For this reason, this waste should be subject to Articles 7 (application for and authorisation of waste facilities), 8 (public participation), 11(3) (stability of the waste facility), 12 (closure and subsequent maintenance of waste facilities), and 14 (financial guarantees for the reclamation of waste facilities and the ground affected after closure).

Amendment 12

ARTICLE 2, PARAGRAPH 3, SUBPARAGRAPH 2

The competent authority may reduce or waive the requirements for the deposit of non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites ***other than gypsum and anhydrite***, as well as for the deposit ***of unpolluted soil and*** of waste resulting from the extraction, treatment and storage of peat as long as it is satisfied that the requirements of Article 4 are met.

The competent authority may reduce or waive the requirements for the deposit of non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites, as well as for the deposit of waste resulting from the extraction, treatment and storage of peat, as long as it is satisfied that the requirements of Article 4 are met. ***In all cases, this is unless these wastes are deposited in a Category A facility.***

Justification

Amounts of prospective waste are small compared with actual mining/quarrying operations, but they can undoubtedly impact the soil/water around boreholes if not disposed of properly. This is why non-hazardous prospective waste must be regulated, in particular if it is deposited in a Category A facility.

Waste from the extraction of gypsum and other evaporites can be non-inert, which means that it dissolves in water and releases substances that can impact on freshwater ecosystems: this contradicts the objectives of the Water Framework Directive. . Unpolluted soil will often undergo fermentation processes, some of which can produce acidic leachates. In all cases waste must be regulated, especially if it is deposited in a Category A facility.

Amendment 13
ARTICLE 2, PARAGRAPH 3, SUBPARAGRAPH 3

Member States may reduce or waive the requirements of Articles 11(3), 12(5) and (6), 13(5), 14 and 16 for non-hazardous non-inert waste, unless deposited in a Category A waste facility. *deleted*

Justification

This “new” non-hazardous non-inert waste class has absolutely no scientific basis. Failure in a facility containing this so-called “non-hazardous” waste could have a physical impact, smothering and killing humans (for example 268 people died in Stava (Italy) in 1985 in an accident involving a fluorite tailings pond) as well as aquatic plants and animals. In addition, this waste – being “non-inert” - dissolves in water and could alter the chemistry of the aquatic environment, for example, by promoting the release of “hazardous” substances . It follows, that facilities storing this waste should not be exempted from requirements to take action after monitoring or in the after-closure period or from the financial guarantee obligation.

Amendment 14
ARTICLE 3, POINT 11

11) ‘dam’ means an engineered structure designed to retain or confine water **and** waste within a pond;

11) 'dam' means an engineered structure designed to retain or confine water **or** waste within a pond;

Justification

If the waste in a dam is drained, or supernatant water decanted to leave dry waste in the impoundment, the structure is still a dam, even in the absence of free water. (First reading Amendment 19).

Amendment 15
ARTICLE 3, POINT 15

15) "waste facility" means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, **for**

15) "waste facility" means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension,

the following time-periods:

and being deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

- no time-period for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan;

- a period of more than six months for facilities for hazardous waste generated unexpectedly;

- a period of more than one year for facilities for non-hazardous non-inert waste;

- a period of more than three years for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste.

Such facilities are deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

Justification

Reinstates amendment 21 from first reading. Any time period linked to waste deposits included in the definition of waste facility should be deleted. Because of the significant volumes of extractive waste produced in some cases and/or the ecological and chemical impact on freshwater ecosystems, there could be serious consequences for human health and the environment in periods of even less than 1 year. For example, stability issues related to inert waste, which could lead to an accidental failure and kill people, could not be left unattended for 3 years, as proposed by the Council now.

Amendment 16
ARTICLE 5, PARAGRAPH 1

1. Member States shall ensure that the operator draws up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste.

1. Member States shall ensure that the operator draws up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste, ***taking account of the principle of sustainable development.***

Justification

The waste management plan should also take account of the so-called principle of sustainability.

Amendment 17
ARTICLE 5, PARAGRAPH 2, POINT (A) (I)

(i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;

(i) waste management ***options*** in the design phase and in the choice of the method used for mineral extraction and treatment;

Justification

Reinstates amendment 26 from first reading. Making (and justifying) decisions on options/methods considered should ensure that waste production and harmfulness are prevented or reduced.

Amendment 18
ARTICLE 5, PARAGRAPH 2, POINT (C)

(c) to ensure short and long-term safe disposal of the extractive waste, in particular by considering, during the design phase, management during the operation and after-closure of a waste facility and by choosing a design which ***requires minimal and, if possible, ultimately no monitoring, control and management of the closed waste facility.***

(c) to ensure short and long term safe disposal of the extractive waste, in particular by considering, during the design phase, management during the operation and after-closure of a waste facility and by choosing a design which ***prevents or at least minimises any long-term negative effects attributable to migration of airborne or aquatic pollutants from the waste facility, and to ensure the long-term geotechnical stability of any dams or heaps rising above the pre-***

existing ground surface.

Justification

There is no “walk-away” solution after the closure of an extractive waste facility. Reference to “no monitoring, control and management of the closed waste facility” needs to be deleted as it is not compatible with Article 12. This requires a certain monitoring, control and management of the closed waste facility, which are cost-effective to run after the initial set-up investment. No matter how careful operators are during the operational phase, the real environmental impacts of an extractive waste facility extend many times longer after closure than the operational life, reaching – depending on the waste stored – time scales of thousands of years.

Amendment 19

ARTICLE 5, PARAGRAPH 3, POINT (G)

(g) measures for the prevention **or minimisation** of water status deterioration, air and soil pollution pursuant to Article 13.

(g) measures for the prevention of water status deterioration, air and soil pollution pursuant to Article 13.

Justification

This provision is needed to meet one of the objectives of the EU’s Water Framework Directive, which has to do with “prevention” and not with “minimisation” of water status deterioration (compare with original proposal from Commission).

Amendment 20

ARTICLE 5, PARAGRAPH 3, POINT (G A) (new)

(ga) a quantitative appraisal of the condition of the land possibly affected by a waste facility prior to commencement of waste management operations, in order to establish the minimum criteria to provide for “a satisfactory state” when carrying out rehabilitation.

Justification

In order to make rehabilitation operational and establish the minimum criteria for “a satisfactory state” as required in Article 3.20, there will be a need for a prior assessment of the pre-working conditions.

Amendment 21
ARTICLE 5, PARAGRAPH 3, SUBPARAGRAPH 2

The waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in paragraph 2 and his obligations under this Directive.

The waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in paragraph 2 and his obligations under this Directive. ***The plan shall explain, in particular, how the option and method chosen as mentioned in paragraph 2(a)(i) will fulfil the objectives of the waste management plan as laid down in paragraph 2(a).***

Justification

Reinstates amendment 34 from first reading. Making (and justifying) decisions on options/methods considered should ensure that waste production and harmfulness are prevented or reduced.

Amendment 22
ARTICLE 6, PARAGRAPH 4, POINT (A)

(a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health ***and*** the environment;

(a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health ***or to*** the environment ***and property***;

Justification

The Council's text would only prevent accidents or limit their consequences for both human health and the environment, whilst this should be the case for each separately. Addition of "property" needed for alignment to the EU Directive on control of major accident hazards (Seveso II).

Amendment 23
ARTICLE 7, PARAGRAPH 2, POINT (B A) (new)

(ba) the type of mineral or minerals extracted and the nature of any overburden and/or gangue minerals that will be displaced in the course of the extractive operations;

Justification

Reinstates amendment 38 from first reading. The application also needs to contain information about the mineral extracted and the overburden, since the risks and the precautionary measures that have to be taken will to a large extent depend upon this information.

Amendment 24
ARTICLE 7, PARAGRAPH 2, POINT (C)

(c) the waste management plan pursuant to Article 5;

(c) the ***approved*** waste management plan pursuant to Article 5;

Justification

Clarification to avoid double checking.

Amendment 25
ARTICLE 7, PARAGRAPH 5

5. The information contained in a permit granted under this Article shall be made available to the competent national and Community ***statistical*** authorities ***where requested for statistical purposes***. Sensitive information of a purely commercial nature, such as information concerning business relations and cost components and the volume of economic mineral reserves, shall not be made public.

5. The information contained in a permit granted under this Article shall be made available to the competent national and Community authorities ***for the purpose of drawing up national and Community inventories of waste facilities respectively***. Sensitive information of a purely commercial nature, such as information concerning business relations and cost components, shall not be made public.

Justification

Reinstates Amendment 40 from First Reading. All the information gathered during the authorisation process should be entered on an “identity card” for each waste facility. This is important for efficient risk assessment, the implementation of the monitoring activities laid down in the Directive and general land-use planning under the terms of other EU environmental legislation (e.g. Water Framework Directive). Only by knowing the profile of the individual facilities and their position will we be able to improve their management and prevent adverse effects on the environment.

Amendment 26
ARTICLE 10, PARAGRAPH 1

1. Member States shall ensure that the operator, when placing extractive waste back into the excavation voids for rehabilitation and construction purposes, whether created through surface or underground extraction, takes appropriate measures in order to:

- (1) secure the stability of the extractive waste in accordance, mutatis mutandis, with Article 11(2);
- (2) prevent the pollution of soil, surface and groundwater in accordance, mutatis mutandis, with Article 13(1) **and** (3);
- (3) ensure the monitoring of the extractive waste in accordance, mutatis mutandis, with Article 12(4) and (5).

1. Member States shall ensure that the operator, when placing extractive waste **and other extracted materials** back into the excavation voids for rehabilitation and construction purposes, whether created through surface or underground extraction, takes appropriate measures in order to:

- (1) secure the stability of the extractive waste **and the excavation void** in accordance, mutatis mutandis, with Article 11(2);
- (2) prevent the pollution of soil, surface and groundwater in accordance, mutatis mutandis, with Article 13 (1), (3) **and (4a)**;
- (3) ensure the monitoring of the extractive waste **and the excavation void** in accordance, mutatis mutandis, with Article 12(4) and (5).

Justification

Reinstates ams 42, 43, 44 and 45 from first reading (the choice of the words "extracted materials" will ensure greater legal certainty). The stability of the waste cannot be guaranteed if the excavation void is not made stable as well. Maintenance and monitoring of the waste to ensure physical and chemical stability cannot be guaranteed if the excavation void (the highest potential contributor to water pollution) is not monitored as well.

Amendment 27
ARTICLE 11, PARAGRAPH 2, POINT (A)

(a) the waste facility is suitably located, taking into account in particular geological, hydrological, hydrogeological, seismic and geotechnical factors, and is designed so as to meet the necessary conditions for, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially Directives 76/464/EEC , 80/68/EEC and 2000/60/EC, and ensuring efficient collection of contaminated water and leachate as and when required under the permit, and reducing erosion caused by

(a) the waste facility is suitably located, taking into account in particular **Community or national obligations relating to protected areas, and** geological, hydrological, hydrogeological, seismic and geotechnical factors, and is designed so as to meet the necessary conditions for, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially Directives 76/464/EEC , 80/68/EEC and 2000/60/EC, and ensuring efficient collection of contaminated water

water or wind as far as it is technically possible and economically viable;

and leachate as and when required under the permit, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;

Justification

Reinstates amendment 46 from first reading. Community obligations for the conservation of habitat and species affect land-use and should be considered in the location of a waste facility. Note that the paragraph refers to “waste facilities” and not to the actual “extractive activities”, which means that their location would not be determined by the presence of the mineral ores etc.

Amendment 28

ARTICLE 11, PARAGRAPH 2, POINT (C A) (new)

(ca) there are appropriate arrangements for the independent validation of the design, location and construction of the waste facility by an expert not employed by the operating company prior to commencement of the operation. In particular, the reports resulting from such independent validation shall be submitted to the competent authority, which will then use them to approve the design, location and construction of the waste facility;

Justification

Reinstates amendment 48 from first reading. External, independent scrutiny reported directly to the competent authority is crucial in order to ensure the safety of the waste facility.

Amendment 29

ARTICLE 12, PARAGRAPH 5, INTRODUCTORY PART

5. When considered necessary by the competent authority following closure of a waste facility, the operator shall, ***in particular***, control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that:

5. When considered necessary by the competent authority, ***in order to meet Community environmental standards, in particular those in Directives 76/464/EEC, 80/68/EEC and 2000/60/EC***, following closure of a waste facility, the operator shall, ***inter alia***, control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular

with respect to surface and groundwater, by ensuring that:

Justification

Reinstates Amendment 54 from First Reading.

Amendment 30

ARTICLE 12, PARAGRAPH 5, POINT (B A) (new)

(ba) passive or active water treatment facilities are set up when necessary to prevent the migration of contaminated leachate from the facility to contiguous groundwater or surface water bodies.

Justification

Reinstates amendment 55 from first reading. The points above are concerned only with physical stability and preventing erosion by excessive runoff. In most cases, care will also need to be taken with respect to quality of water, and passive or active treatment is often necessary to this end.

Amendment 31

ARTICLE 12, PARAGRAPH 6, SUBPARAGRAPH 3

In cases and at a frequency to be determined by the competent authority, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour.

In cases and at a frequency to be determined by the competent authority, ***and in any event at least once a year***, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour.

Justification

Reinstates amendment 56 from first reading. Self-explanatory.

Amendment 32

ARTICLE 13, PARAGRAPH 1, INTRODUCTORY PART

1. The competent authority shall satisfy

1. The competent authority shall satisfy

itself that the operator has taken the necessary measures in order to:

itself that the operator has taken the necessary measures in order to *meet Community environmental standards, in particular to prevent, in accordance with Directive 2000/60/EC, the deterioration of current water status, inter alia, in order to:*

Justification

Reinstates amendment 58 from first reading.

Amendment 33

ARTICLE 13, PARAGRAPH 1, POINT (B A) (new)

(ba) collect contaminated water and leachate;

Justification

Reinstates amendment 61 from first reading.

Amendment 34

ARTICLE 13, PARAGRAPH 1, POINT (C)

(c) treat contaminated water *and* leachate collected from the waste facility to the appropriate standard required for their discharge.

(c) treat contaminated water, leachate *and any other effluent* collected from the waste facility to the appropriate standard required for their discharge, *so that it complies with Community obligations, in particular those in Directives 76/464/EEC, 80/68/EEC and 2000/60/EC.*

Justification

The only relevant standards for effluent discharges are those of Community legislation unless national legislation is more stringent.

Amendment 35

ARTICLE 13, PARAGRAPH 4

4. Member States shall *make* the disposal of extractive waste, whether in solid, slurry or

4. Member States shall *prohibit* the disposal of extractive waste, whether in solid, slurry

liquid form, into any receiving body of water other than one constructed for the purpose of disposing of extractive waste **conditional upon** compliance **by the operator** with the relevant requirements of Directives 76/464/EEC, 80/68/EEC and 2000/60/EC.

or liquid form, into any receiving body of water other than one constructed for the purpose of disposing of extractive waste, **unless the operator can demonstrate a priori** compliance with the relevant requirements of Directives 76/464/EEC, 80/68/EEC and 2000/60/EC.

Justification

The Directive allows direct discharges of waste from the extractive industries to continental, coastal and marine waters. However, these must be explicitly prohibited in line with obligations from the Treaty (e.g. prevention of damage at source); from existing Community environmental legislation (e.g. the Waste and the Water Framework Directives); and from Annex II to the OSPAR Convention. Further, compliance with the Water Framework Directive should not be ensured a posteriori but a priori by preventing "deterioration".

Amendment 36

ARTICLE 13, PARAGRAPH 4 A (new)

4a. In the case of excavation voids, including underground voids and back-filled surface mine voids, which are allowed to flood after closure, the operator shall take the necessary measures to prevent water status deterioration and soil pollution, and shall provide the competent authority with information on the following at least six months before the cessation of dewatering of the voids:

(a) the layout of excavated voids, clearly marking those that are to be allowed to flood following cessation of dewatering, and geological details;

(b) a summary of the quantity and quality of water encountered in the excavated voids during at least the last two years of working;

(c) predictions of the impact, including location and quantity, of any future polluting discharges from the excavated voids to groundwater and surface water, and plans for the mitigation and remediation of such discharges;

(d) proposals for monitoring the process of flooding of the voids, to provide early warning of the need to instigate mitigation measures.

Justification

Reinstates amendment 65 from first reading. Volumetrically, the EU has far more problems with pollution from abandoned mine excavation voids than from extractive waste, and this legacy will never be dealt with adequately as long as each Member State is entirely free to ignore the problem. Therefore, voids should also be subject to adequate controls. The provisions needed to deal with mine void pollution are not onerous (they already exist in UK law, for instance, and have been implemented there for 5 years at no great expense or inconvenience to the industry, but at great benefit to decision-making by the regulators.

Amendment 37

ARTICLE 14, PARAGRAPH 1, INTRODUCTORY PART

1. The competent authority shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent, in accordance with procedures to be decided by the Member States, so that:

1. The competent authority shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent, in accordance with procedures to be decided by the Member States ***and approved by the Commission***, so that:

Justification

Reinstates amendment 66 from first reading.

Amendment 38

ARTICLE 14, PARAGRAPH 1, POINT (B)

(b) there are funds readily available at any given time for the rehabilitation of the site.

(b) there are funds readily available at any given time for the rehabilitation of the ***land within the site as well as land directly affected by the waste facility.***

Justification

Rehabilitation should apply not just to the site of the waste facility but to infrastructure within the site that supports the waste facility. The definition of “rehabilitation” in the Council text

makes it crystal clear that this is to treat “the land affected by a waste facility”. This change is needed to ensure that the guarantee covers rehabilitation of all land affected by the waste facility, as was the case in the original proposal of the Commission.

Amendment 39
ARTICLE 14, PARAGRAPH 3

3. The size of the guarantee shall be ***appropriately*** adjusted in ***line*** with ***the*** rehabilitation work needed to be carried out on the waste facility.

3. The size of the guarantee shall be ***periodically*** adjusted in ***accordance*** with ***any*** rehabilitation work needed to be carried out on ***the land within the site as well as land directly affected by*** the waste facility.

Justification

Reinstates the original text of the Commission proposal and makes it clear that the guarantee which covers rehabilitation should apply not just to the site of the waste facility but to infrastructure within the site that supports the waste facility.

Reinstates original text of the Commission. The definition of “rehabilitation” in the Council text makes it crystal clear that this is to treat “the land affected by a waste facility”. This change is needed to ensure that the guarantee covers rehabilitation of all land affected by the waste facility, as was the case in the original proposal of the Commission

Amendment 40
ARTICLE 20

Inventory of closed ***waste facilities***

Member States shall ensure that an inventory of closed ***waste facilities***, including ***abandoned waste*** facilities, located on their territory ***which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment*** is drawn up ***and periodically updated***. Such an inventory, to be made available to the public, shall ***be carried out within four years from, taking into account the methodologies as referred to in Article 21,***

Inventory of closed ***sites***

Member States shall ensure that:

if available.

*(1) within three years from the entry into force of this Directive, an inventory of closed sites (including **disused** facilities) located on their territory is drawn up. Such an inventory, to be made available to the public, shall **at least contain information on the following:***

(a) the geo-referenced location of the site;

(b) the type of mineral or minerals formerly extracted;

(c) the types of waste present on the site;

(d) the physical and chemical stability of the site;

(e) whether any acid or alkaline drainage, or metal concentration, is being generated;

(f) the environmental conditions of the site, with particular regard to quality of soil, surface water and its receiving catchment area, including river sub-basins, and groundwater;

(2) the sites listed in the inventory referred to in point 1 are classified according to the degree of their impact on human health and the environment. The upper part of the inventory will thus include closed sites causing serious negative environmental impacts or which have the potential of becoming in the near future a serious threat to human health, the environment and/or property. The lower part of the inventory will include those sites with no significant negative environmental impacts and no potential of becoming in future a threat to human health, the environment and/or to property;

(3) within four years of the entry into force of this Directive, rehabilitation is started on sites classified in the upper part in order to satisfy the requirements of Article 4 of Directive 75/442/EEC. Where the competent authority cannot ensure

that the necessary rehabilitation measures can all be started at the same time, the competent authority shall be entitled to decide which sites must be rehabilitated first;

(4) the financial costs for complying with the requirement of point 3 are borne by the waste producer, insofar as the latter is known and available. Where the waste producer is unknown or unavailable, national or Community rules on liability shall apply.

Justification

Reinstates amendment 71 from first reading. There is currently no EU-wide reliable information about the number and location of closed/abandoned waste facilities. Member States need to draw up an inventory of all of these facilities. Remediation of serious negative environmental impacts resulting from closed/abandoned sites, in particular in Central and Eastern Europe, has to be ensured (which the Council has totally ignored in its Common Position). Lack of proper closure procedures, if any, at the time of closure makes already closed or abandoned waste facilities an unmanaged burden of the past, veritable “time bombs”, with accidents waiting to happen on top of the everyday pollution they cause.

Amendment 41 ARTICLE 21, PARAGRAPH 1

1. The Commission, assisted by the Committee referred to in Article 23, shall ensure that there is an appropriate exchange of technical and scientific information between Member States, with a view to developing methodologies relating to:

(a) the implementation of Article 20;

(b) the rehabilitation of those closed waste facilities identified under Article 20 in order to satisfy the requirements of Article

4. Such methodologies shall allow for the establishment of the most appropriate risk assessment procedures and remedial actions having regard to the variation of geological, hydrogeological and climatological characteristics across

1. The Commission, assisted by the Committee referred to in Article 23, shall ensure that there is an appropriate exchange of technical and scientific information between Member States, with a view to developing methodologies relating to the implementation of Article 20.

Such methodologies shall allow for the establishment of the most appropriate risk assessment procedures and remedial actions having regard to the variation of geological, hydrogeological and climatological characteristics across

Europe.

Europe.

Justification

To be consistent with the changes of Article 20.

Amendment 42
ARTICLE 24, PARAGRAPH 2 A (new)

2a. Without prejudice to paragraph 1, Member States shall ensure that, from the entry into force of this Directive or, with regard to new Member States, from the date of accession, and notwithstanding any closure of a waste facility referred to in paragraph 1, the operator:

(a) ensures that the facility in question is operated and, in the event of its closure, managed after such closure, in a way that does not prejudice the fulfilment of the requirements of this Directive, and those of any other relevant Community legislation, including Directive 2000/60/EC;

(b) ensures that the facility in question does not cause any deterioration of surface water or groundwater status in accordance with Directive 2000/60/EC or soil pollution, due to leachate, contaminated water or any other effluent or waste, whether in solid, slurry or liquid form;

(c) takes all steps required to remediate the consequences of any breach under point (b) in order to achieve compliance with relevant Community legislation, including Directive 2000/60/EC.

Amendment 43
ARTICLE 24, PARAGRAPH 3

3. Articles 5 to 11, 12(1), (2), (5) and (6), 13(4) and (5) and 14(1) to (3) shall not ***deleted***

apply to those waste facilities that:

- stopped accepting waste before ,*
- are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by the competent authority, and*
- will be effectively closed by 31 December 2010.*

Member States shall notify such cases to the Commission by and ensure that these facilities are managed in a way that does not prejudice the achievement of the objectives of this Directive and those of any other Community legislation, including Directive 2000/60/EC.

Justification

Council's text is inconsistent as we should all try to prevent "hasty" extractive waste facility closures and the resulting environmental and associated human health impacts. This Directive is being adopted in order to better manage extractive waste facilities and protect people and the environment from their impacts. It should not encourage a 'rash' of hasty closures of "existing" facilities to avoid application of important provisions. It does not make for good environmental practice to legislate only for closure of waste facilities that do not yet exist, while somehow overlooking those already in operation.

Amendment 44

ARTICLE 24, PARAGRAPH 3 A (new)

3a. In the event that the Council is seized of a proposal by the Commission pursuant to Article 55 of the Act of Accession 2005 [or Accession Protocol if the Treaty establishing a constitution for Europe has entered into force on 1 January 2007], then the Council shall exercise its discretion pursuant to that provision in such a way as not to undermine the objectives of this Directive.

Justification

Necessary in view of the potential significance of mining waste in Bulgaria and Romania.

Amendment 45

ARTICLE 25, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before *. They shall forthwith inform the Commission thereof.

* **24 months** after the date of entry into force of this Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before *. They shall forthwith inform the Commission thereof.

* **18 months** after the date of entry into force of this Directive.

Justification

18 months should be enough to adopt national provisions to comply with this Directive, as suggested in the Commission proposal. In view of the urgent need to cover existing EU legislative gaps and prevent further extractive waste spills and their aftermath across Europe, transposition time should not be extended beyond that.

Amendment 46

ANNEX II, POINT (1)

(1) description of expected physical **and** chemical characteristics of the waste to be deposited in the short and the long term, with particular reference to its stability under surface atmospheric/meteorological conditions;

(1) description of expected physical, chemical **and radiological** characteristics of the waste to be deposited in the short and the long term, with particular reference to its stability under surface atmospheric/meteorological conditions;

Justification

In order for the characterisation to be correct and complete, the radiological characteristics of the waste have to be included.

Amendment 47 ANNEX III

A waste facility shall be classified under category A if:

- a failure or incorrect operation, e.g. the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility; or

- it contains waste classified as hazardous under Directive 91/689/EEC **above a certain threshold;** or

- it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC **above a certain threshold.**

A waste facility shall be classified under category A if:

- in the event of a breach or failure the loss of human life and/or major environmental damage cannot reasonably be excluded on the basis of a risk assessment taking into account factors such as the size, the location and the environmental impact of the waste facility, or

- it contains waste classified as hazardous under Directive 91/689/EEC; or

- it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC.

Justification

Reinstates amendment 76 from first reading (and amendment 77 and 78 that were considered to be linguistic for the first reading Plenary vote). Council's text weakens the classification criteria for the most dangerous - Category A - extractive waste facilities and this is unacceptable. It reverses the burden of proof relating to how the results of the risk analysis should be used. The change proposed here corrects that.

EXPLANATORY STATEMENT

There are two reasons why there is a need for the proposed directive on the management of waste from the extractive industries. The extractive industries produce very large volumes of waste, one of the biggest waste streams within the EU. The environmental problems created if this waste is mismanaged are significant. Major accidents involving collapsing tailings dams in Spain and Romania, inter alia, in recent years show that mismanagement of the waste can have a disastrous environmental impact. If the waste is not managed or stored in the correct manner, significant discharges into the environment of heavy metals, for example, occurs. Throughout the EU there is a large, unknown number, of old mining waste dumps which are discharging significant quantities of pollutants into water and soil. If operations are not concluded by restoring the landscape and managing the waste, major permanent inroads are created which cause damage to the natural environment. There are therefore significant environmental reasons for a separate directive on waste from the extractive industries.

At the current time, the legal situation is somewhat unclear as to which EU legislation covers the extractive industries. Existing directives, including the framework directive on waste and the landfill directive, are largely applicable. However, parts of that legislation are ill-suited to circumstances in the mining industry, for example; some provisions are in practice geared to totally different types of waste. There is therefore a need for a separate directive which is based on the particular conditions in the industry. The legal situation is further complicated by judgments of the Court of Justice, in particular the case of Avesta-Polarit, C-114/01. This new directive may create greater legal clarity. It is therefore of great importance that the directive is as comprehensive as possible in order to minimise the scope for further vagueness in the legislation. It is therefore desirable to make general and imprecise exceptions as infrequently as possible.

Much of the waste produced does not constitute an environmental problem in itself. A significant part of the waste constitutes a resource, for example in road-building or where the site of the mine is to be restored. The directive therefore makes a distinction between inert and non-inert waste. Non-hazardous inert waste is covered only by some of the requirements prescribed by the directive in the case of inert waste. It is important, however, to understand that even waste judged to be inert can cause significant environmental problems and damage if it is mismanaged. This includes interference with nature, the possibility of landslides or the discharge of substances through leaching. Inert waste must therefore also be covered by several of the provisions of the directive.

Introducing sound environmental legislation promotes more sustainable production, lower waste production, long-term investment and businesses with a serious undeveloped approach to the environment. In this sector, there is also strong technological development. It is therefore not desirable to allow the directive to bind itself to certain technological methods or solutions. For research and businesses within the EU working with mining environmental issues, these new rules provide an opportunity to sell, develop and disseminate knowledge. The mining and extractive industries operate and compete on a global basis. The most serious environmental problems in connection with mining are often to be found in developing countries. If the EU takes the lead and develops environmental thinking within the industry, this may give an impetus to environmentally responsible mining in other quarters as well. The EU should therefore not, either through its development policy or other forms of co-financing such as the EIB, contribute to financing mining projects in other countries which do

not satisfy the requirements of this directive.

An important aspect of the directive is the requirements concerning a financial guarantee from producers. The costs associated with waste and post-operation rehabilitation of the production site constitute parts of the costs of production for which producers are fully responsible. To ensure that is so, a financial guarantee system is proposed. It is important that this system is secure so that the authorities concerned have direct access to the funds and so that those funds cannot be jeopardised in the event of bankruptcy, for example. The amount of the guarantee must be adjusted regularly so that it corresponds to the costs for rehabilitation at the relevant stage of production.

At its first reading, the Council accepted several of Parliament's amendments from first reading. In other areas, the Council has totally rejected Parliament's proposals to improve the directive. Parliament should therefore resubmit the proposals which the Council has not accepted. This applies particularly to the demands that historical waste should not only be inventoried but also that measures should be taken to deal with it in cases where it creates environmental problems. The Council has also created a new category of waste for which the Member States are given broad scope for derogations from the directive. However no definition has been created for this new category. This is a change which creates great legal and environmental uncertainty. This new category should therefore be deleted. In other areas likewise, the Council has opted for wording which is more unclear or has lower environmental ambitions. This applies, for example, to the transitional rules, the financial guarantee and excavation voids. The proposal for a directive should be improved in those and other respects.

PROCEDURE

Title	Council common position for adopting a directive of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC
References	16075/1/2004 – C6-0128/2005 – 2003/0107(COD)
Legal basis	Article 251(2) EC
Basis in Rules of Procedure	Rule 62
Date of Parliament's first reading – P5	31.3.2004 P5_TA(2004)0240
Commission proposal	COM(2003)0319 – C5-0256/2003
Amended Commission proposal	
Date receipt of common position announced in plenary	12.5.2005
Committee responsible Date announced in plenary	ENVI 12.5.2005
Rapporteur(s) Date appointed	Jonas Sjöstedt 27.7.2004
Previous rapporteur(s)	
Discussed in committee	24.5.2005
Date adopted	13.7.2005
Result of final vote	for: 36 against: 5 abstentions: 15
Members present for the final vote	Adamos Adamou, Georgs Andrejevs, Liam Aylward, Johannes Blokland, John Bowis, Frederika Brepoels, Chris Davies, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Jillian Evans, Anne Ferreira, Françoise Grossetête, Cristina Gutiérrez-Cortines, Rebecca Harms, Mary Honeyball, Caroline Jackson, Dan Jørgensen, Christa Klaß, Holger Krahmer, Urszula Krupa, Aldis Kušķis, Marie-Noëlle Lienemann, Peter Liese, Linda McAvan, Marios Matsakis, Riitta Myller, Péter Olajos, Vittorio Prodi, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Horst Schnellhardt, Richard Seeber, Kathy Sinnott, Jonas Sjöstedt, Bogusław Sonik, María Sornosa Martínez, Antonios Trakatellis, Evangelia Tzampazi, Thomas Ulmer, Anja Weisgerber, Åsa Westlund, Anders Wijkman
Substitutes present for the final vote	Margrete Auken, Jerzy Buzek, Genowefa Grabowska, Vasco Graça Moura, Umberto Guidoni, Jutta D. Haug, Erna Hennicot-Schoepges, Kartika Tamara Liotard, Renate Sommer, Claude Turmes
Substitutes under Rule 178(2) present for the final vote	Markus Pieper
Date tabled – A5	15.7.2005 A6-0236/2005
Comments	...