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*****III REPORT**

on the joint text approved by the Conciliation Committee for a directive of the European Parliament and of the Council on the management of waste from the extractive industries and amending Directive 2004/35/EC
(PE-CONS 3665/2005 – C6-0405/2005 – 2003/0107(COD))

European Parliament delegation to the Conciliation Committee

Delegation chairwoman: Dagmar Roth-Behrendt
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.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the joint text approved by the Conciliation Committee for a directive of the European Parliament and of the Council on the management of waste from the extractive industries and amending Directive 2004/35/EC
(PE-CONS 3665/2005 – C6-0405/2005 – 2003/0107(COD))**

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee and the relevant interinstitutional statement (PE-CONS 3665/2005 – C6-0405/2005),
 - having regard to the joint declaration by Bulgaria and Romania on implementation of the Directive,¹
 - having regard to its position at first reading² on the Commission proposal to Parliament and the Council (COM(2003)0319)³,
 - having regard to its position at second reading⁴ on the Council common position⁵,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2005)0477)⁶,
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 65 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A6-0001/2006),
1. Approves the joint text and confirms its statement on the joint declaration by Bulgaria and Romania;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to have it published, together with the interinstitutional statement thereon, in the Official Journal of the European Union;

¹ Annexed to the joint text.

² OJ C 103 E, 29.4.2004, p. 451.

³ Not yet published in OJ.

⁴ Texts Adopted, 6.9.2005, P6_TA(2005)0319.

⁵ OJ C 172 E, 12.7.2005, p. 1.

⁶ Not yet published in OJ.

4. Instructs its President to forward this legislative resolution to the Council and Commission.

EXPLANATORY STATEMENT

Background

Waste from the extractive industries involves materials such as topsoil, overburden, waste rock and tailings, discarded during prospecting, extraction and treatment of mineral resources. It represents the largest single waste stream in Europe, accounting for over 20% of all waste generated.

On 2 June 2003, the Commission presented a proposal for a Directive on the management of such waste. The proposal 'provides for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries' (Article 1).

On 31 March 2004, the Parliament adopted 74 amendments to the proposal at first reading. The Council adopted its Common Position on 12 April 2005. At its second reading on 6 September 2005, the Parliament adopted 36 amendments to the Common Position. They concerned in particular:

- water pollution issues;
- financial guarantees to cover operators' liabilities under the Directive;
- the scope of the Directive;
- waste management and pollution prevention;
- transitional provisions and the obligations of acceding countries.

Conciliation

Parliament's delegation to the Conciliation Committee held its constituent meeting on 27 September 2005. Its members instructed its Chair, Dagmar Roth-Behrendt, the Chair of the committee responsible, Karl-Heinz Florenz, and the rapporteur, Jonas Sjöstedt, to begin informal negotiations with the Council. The conciliation procedure was formally opened on 12 October as an agenda item without debate. Trialogues were held on 12 October and 25 October. At the third trialogue meeting, on 21 November, a compromise was reached covering all the unresolved issues. This was approved by Coreper on 23 November and by Parliament's delegation on 29 November (with 15 votes in favour, no votes against and no abstentions). It was subsequently confirmed by exchange of letters.

The key points of the agreement reached in the conciliation procedure can be summarised as follows:

1. Water pollution issues

At second reading, Parliament had adopted amendments clarifying applicable obligations relating to water protection and establishing direct references to Community water legislation; prohibiting the discharge of waste into receiving waters unless prior compliance with the Water Framework Directive was established; and addressing operators' obligations with regard to waste placed in excavation voids and excavation voids which were left to flood. Council was opposed to any reference to 'other extractive materials' in addition to extractive waste; argued that excavation voids fell outside the scope of the Directive; and rejected what it saw as a reversal of the burden of proof as far as compliance with the Water Framework Directive was concerned.

The agreement reached requires (Article 10) Member States to ensure that, when placing extractive waste back into excavation voids, operators take appropriate measures to ensure the monitoring of the extractive waste and the excavation void. Moreover, where extractive waste is placed back into excavation voids which will subsequently be allowed to flood, operators are required (Article 13) to take the necessary measures to prevent or minimise water status deterioration and soil pollution, and to provide the competent authority with the information necessary to ensure compliance with Community obligations, in particular, those under the Water Framework Directive.

2. Financial guarantees to cover operators' liabilities

This was one of the most contentious issues. Parliament's position was that financial guarantees should be periodically adjusted in accordance with rehabilitation work to be carried out and that guarantees must cover the potential cost of rehabilitation work on land within the site, as well as land directly affected by the waste facility. Council emphasised that, if operators' were to be able to insure themselves against their liabilities under the Directive, these must be defined as clearly as possible.

In the agreement reached (Recital 25, Article 12(3), Article 14(1)(b), and Article 14(3)) Parliament's concerns are substantially met. Financial guarantees must be sufficient to cover the cost of rehabilitation of the land affected by the waste facility, which includes the waste facility itself, as described in the waste management plan. The size of the guarantee must be periodically adjusted in accordance with any necessary rehabilitation work.

3. Scope

References to radioactive extractive waste and to potentially relevant legislation under the Euratom Treaty have been clarified in Recital 10.

A substantial recasting of Recital 30 addresses Parliament's concerns by adding abandoned waste facilities to the closed waste facilities which are to be the subject of inventories of facilities actually or potentially posing a serious threat to human health or the environment; and by stating that such inventories should provide a basis for an appropriate programme of measures.

A new recital (Recital 32) promotes the integration of environmental protection

considerations into other Community policies and activities, with a view to promoting sustainable development.

The definition of 'treatment of mineral resources' in Article 3(8) has been modified so as to cover the burning of limestone.

4. Waste management and pollution prevention

The agreement reached reinforces environmentally-sensitive and sustainable development. Recital 13 stresses the importance of preventing or minimising (rather than merely treating, recovering and disposing of) extractive waste, while four substantial amendments to Article 5(1), 5(2)(c) and 5(3) clarify the content of the waste management plans which operators will be required to draw-up. For example, Article 5(3)(h) now requires that waste management plans include a survey of the original condition of the land to be affected by the waste facility, to serve as a benchmark for rehabilitation of the site after closure of the waste facility.

5. Transitional provisions and acceding countries

Three related issues were at stake: transitional provisions in respect of waste facilities already in operation; the deadline for the transposition of the Directive; and the question of possible derogations from the provisions of the Directive in the case of acceding countries.

Parliament's position at second reading was that the Directive should be transposed within 18 months of its entry into force; that existing waste facilities be subject to certain requirements during the transitional period granted and that no transitional provisions be granted to inactive but not yet closed facilities; and that any potential derogations to be granted to acceding countries should not undermine the objectives of the Directive. Council's position was that the transitional provisions foreseen in its Common Position were reasonable; that a period of 24 months was necessary to ensure adequate transposition of the Directive; and that the right of acceding countries to seek derogations from the corpus of Community law - and its right to grant these - was enshrined in the accession treaty.

The agreement reached provides (Article 24) for more stringent transitional provisions than foreseen in the Council's Common Position. Moreover, Member States are required to ensure that, from the date on which it enters into force, and notwithstanding any closure of a waste facility before the Directive is transposed, extractive waste is managed in a way that does not prejudice the fulfilment of the objectives of the Directive or of environmental requirements set out in other Community legislation, including the Water Framework Directive. Member States are given (Article 25(1)) two years to transpose the Directive.

The proposed Directive is accompanied by an inter-institutional declaration welcoming a joint declaration by Bulgaria and Romania. The joint declaration by the two countries acknowledges 'the significance of the present Directive for environmental protection in Europe'; states that they are 'committed to make all necessary efforts to implement the Directive within the deadlines provided for in the text'; and states 'their strong political will to undertake all necessary measures to comply with the provisions of the Directive ... in the same way as the other Member States.'

Conclusion

This Directive is an important piece of environmental legislation. The agreement reached in the course of the conciliation procedure represents a positive outcome for Parliament, with satisfaction having been found on most of the issues covered by its second reading amendments. The delegation accordingly recommends that Parliament approve the joint text at third reading.

PROCEDURE

Title	Joint text approved by the Conciliation Committee for a directive of the European Parliament and of the Council on the management of waste from the extractive industries and amending Directive 2004/35/EC
References	PE-CONS 3665/2005 – C6-0405/2005 – 2003/0107(COD)
Legal basis	Articles 251(5) and 175 EC
Basis in Rules of Procedure	Rule 65
Delegation chairwoman: Vice-President	Dagmar Roth-Behrendt
Chairman of committee responsible	Karl-Heinz Florenz ENVI
Rapporteur	Jonas Sjöstedt
Commission proposal	Proposal for a directive of the European Parliament and of the Council on the management of waste from the extractive industries – COM(2003)0319 – C5-0256/2003]
Date of Parliament's first reading – P[5]	31.3.2004 P5-TA(2004)0240
Council common position Date announced in plenary	16075/1/2004 – C6-0128/2005 12.5.2005
Commission position (Article 251(2), subpara 2, indent 3)	COM(2005)0170
Date of Parliament's 2nd reading – P[5]	6.9.2005 P6-TA(2005)0319
Commission opinion (Article 251(2), subpara 3, point (c))	COM(2005)0477
Date Council received 2nd reading	29.9.2005
Date of Council letter on non-approval of Parliament amendments	6.10.2005
Conciliation Committee meetings	12.10.2005 6.12.2005
Date of vote by Parliament delegation	29.11.2005
Result of vote	for: 15 against: abstentions:
Members present	Karl-Heinz Florenz, Françoise Grossetête, Jutta D. Haug, Gyula Hegyi, Marie Anne Isler Béguin, Caroline Jackson, Linda McAvan, Riitta Myller, Dagmar Roth-Behrendt, Jonas Sjöstedt, Renate Sommer, María Sornosa Martínez, Åsa Westlund
Substitutes present	Richard Seeber, Bogusław Sonik
Date of agreement in Conciliation Committee	6.12.2005
Date on which the co-chairmen established that the joint text had been approved and forwarded it to Parliament and the Council	8.12.2005
Date tabled – A6	10.1.2006 A6-0001/2006

EXTENSION OF DEADLINES

Extension of deadline for second reading by Council	No
Extension of deadline for convening the Committee Requesting institution – date	No
Extension of deadline for work in the Committee Requesting institution – date	Yes Council – 17.11.2005
Extension of deadline for adopting the act Requesting institution – date	No