REPORT

on implementation of the Mining Waste Directive (2006/21/EC) (2015/2117(INI))

Committee on the Environment, Public Health and Food Safety

Rapporteur: György Hölvényi
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on implementation of the Mining Waste Directive (2006/21/EC)
(2015/2117(INI))

The European Parliament,


– having regard to Commission Decision 2009/335/EC of 20 April 2009 on technical guidelines for the establishment of the financial guarantee,


– having regard to Commission Decision 2009/360/EC of 30 April 2009 completing the technical requirements for waste characterisation,

– having regard to Commission Decision 2009/358/EC of 29 April 2009 on the harmonisation, the regular transmission of the information and the questionnaire referred to in Articles 22(1)(a) and 18 of Directive 2006/21/EC,


– having regard to the report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Directive 2006/21/EC (COM(2016)0553),

– having regard to 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,

– having regard to the European Implementation Assessment study on the ‘Mining Waste Directive’ of January 2017 carried out by the European Parliamentary Research Service, including its Annex 1 Study entitled ‘Exploring the alternatives to technologies involving high environmental and health risks related to the improper management of the waste from extractive industries: Challenges, risks and opportunities for the extractive

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6 OJ L 110, 1.5.2009, p. 46.
7 OJ L 143, 30.4.2004, p. 56.
industries arising in the context of the "circular economy" concept\(^1\),

– having regard to its resolution of 5 May 2010 on a general ban on the use of cyanide mining technologies in the European Union\(^2\),

– having regard to its resolution of 8 October 2015 on lessons learned from the red mud disaster, five years after the accident in Hungary\(^3\),

– having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Closing the loop - An EU action plan for the Circular Economy’\(^4\),

– having regard to the European Commission feasibility study on the concept of an EU-wide industrial disaster risk sharing facility\(^5\),

– having regard to Rule 52 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety (A8-0071/2017),

A. whereas in the aftermath of two major accidents involving the spill of hazardous extractive waste, Directive 2006/21/EC (hereinafter ‘the Directive’) on the management of waste from extractive industries was adopted with the aim of preventing and reducing as far as possible any adverse effects on the environment and any risks to human health resulting from the management of extractive waste;

B. whereas the deadline for transposition of the Directive by the Member States expired on 1 May 2008, and almost all Member States were behind schedule with the transposition of the Directive into their national legislation;

C. whereas the Commission has launched ‘non-conformity’ infringement procedures against 18 Member States for their failure to correctly and completely transpose the Directive; whereas, furthermore, four cases were still ongoing at the end of November 2016;

D. whereas a full eleven years after the adoption of the Directive, the Commission has not yet adopted the guidelines on inspections as required by Article 22(1)(c) of the Directive; whereas the need for robust guidelines from the Commission is clearly underlined by the absence of a definition and details of how an inspection should be carried out, and the different interpretations by Member States of the Directive’s requirements;

E. whereas ten Member States reported having no Category A facilities within their national boundaries;

F. whereas the limitations of the current three-year reporting system, evidenced by the disparities between the information provided by Member States and the probable

\(^{1}\) PE number: 593.788.  
\(^{2}\) OJ C 81E, 15.3.2011, p. 74.  
\(^{3}\) Texts adopted, P8_TA(2015)0349.  
\(^{4}\) Study to explore the feasibility of creating a fund to cover environmental liability and losses occurring from industrial accidents, Final Report, European Commission, DG ENV, 17 April 2013.
misinterpretation of some of the provisions of the Directive, have meant that the unsatisfactory quality of available data has not made it possible to outline and assess the implementation of the Directive in practice;

G. whereas there is no database on extractive waste facilities at EU level;

H. whereas waste originating from the quarrying and mining industries makes up a very large proportion of the total volume of waste produced in the European Union (approximately 30% in 2012), part of which is hazardous waste;

I. whereas the EU is highly dependent on the import of raw materials from third countries and a significant number of natural resources face rapid depletion; whereas the environmental and health legislation in those third countries is often less stringent than in the EU;

J. whereas the Commission Communication entitled ‘Closing the loop - An EU action plan for the Circular Economy’ (COM(2015)0614) did not provide for any legislative review of the Directive;

K. whereas the transition to a circular economy offers important intrinsic environmental benefits and is key to the EU’s long-term competitiveness;

1. Regrets the fact that Member States (EU-27)\(^1\) have experienced certain transposition problems in terms of timing or quality, or both, and that proper implementation of the Directive cannot be expected in practice for the time being in all Member States, given the existence of ongoing ‘non-conformity’ infringement procedures;

2. Calls on the Member States concerned and the Commission to ensure the correct and complete transposition and implementation of the Directive as soon as possible; asks the Commission to provide sufficient guidance to the Member States in order to ensure this correct and complete transposition;

3. Underlines the fact that the lack of guidelines on inspections, as foreseen by Article 22 (1)(c) of the Directive, not only hampers the effective and efficient implementation of the Directive in practice, but also results in differences in compliance and enforcement costs for operators and authorities from one Member State to another;

4. Urges the Commission, therefore, to adopt concrete sector-specific guidelines, including a definition, on inspections in the extractive waste industries as soon as possible, and in any case not later than by the end of 2017;

5. Calls on the Commission to ensure the possibility of unscheduled on-the-spot inspections by the relevant competent Member State authorities;

6. Considers that the current reporting system under Article 18(1) is not fit for purpose and is ineffective in that it does not allow for the full picture regarding implementation to be outlined and assessed, while creating an unnecessary burden on Member States and the Commission services and thus also reducing efficiency;

\(^1\) cf. footnote 3 to the explanatory statement.
7. Highlights in this respect the deficient design of the data collection tool (the questionnaire\(^1\)), which allows for ambiguous interpretations and thus leads to the reporting of measures adopted at national level rather than how they are put into practice, especially as regards reporting on extractive waste facilities;

8. Underlines that some of the figures provided by Member States regarding the number of facilities on their territories identified as being subject to the Directive do not seem plausible, because in some cases they are relatively low when compared to data on the total generation of extractive waste at national level coming from other information sources;

9. Calls for reform of the current reporting mechanism (including the questionnaire) as a matter of priority and in time for the upcoming deadlines for the third reporting period (2014-2017), so as to allow a proper assessment of the implementation of the Directive in practice based on the third reporting period and thereafter; further calls on the Commission to include in the reporting mechanism a demand that all the relevant environmental impact data be provided;

10. Suggests that the questionnaire under Annex III of Commission Decision 2009/358/EC needs to be improved by obliging Member States to report exhaustive, up-to-date and reliable data on extractive waste facilities hosted on their territories; proposes that the chosen reform approach should allow for a European database of extractive waste facilities to be established and easily updated, as this would be instrumental in ensuring that the full picture regarding practical implementation of the Directive can be outlined, monitored and assessed at EU level; notes that other approaches could also be given consideration, such as the use of an exemplary completed national report under Article 18(1) of the Directive as a model to be followed, and that such improvements should no longer allow for different interpretations by Member States on the data to be provided;

11. Regrets that the Commission has published only one implementation report covering both the first and second reporting periods (2008-2011 and 2011-2014), instead of one every three years as required pursuant to Article 18(1) of the Directive, thus leaving the public for many years without information on the (lack of) implementation of this Directive and thereby de facto delaying further action to ensure full implementation of this Directive which, it should be recalled, deals with an economic activity with significant environmental, health and social implications; calls on the Commission to strictly respect the three-year intervals for reporting;

12. Acknowledges that the majority of Member States have adopted the measures required to implement the provisions set out in the Directive; calls attention to the fact, however, that differences between Member States’ interpretations show that further effort is needed to ensure that all Member States understand and apply the basic concepts of the directive in a similar way, thus ensuring a level playing field across the EU;

13. Welcomes the Commission’s plans to issue general guidance on the implementation of the provisions set out in the Directive, which would allow for improvements in both compliance with and enforcement of the Directive, including the whole life cycle of a mining waste facility from permitting to rehabilitation and post-closure monitoring;

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\(^1\) Annex III to Commission Decision 2009/358/EC.
draws attention to the large variations in interpretation and misunderstandings as regards the basic provisions of the Directive (for example, whether Member States host facilities covered by the Directive or not);

14. Is especially concerned about the incompleteness of the process regarding the due classification and permitting of Category A facilities, which involve higher risks, and warns that external emergency plans are missing for around 25% of the Category A facilities located on EU territory; calls, therefore, on the Member States to finalise the adequate classification of facilities on their territories and to adopt the missing external emergency plans no later than by the end of 2017;

15. Is concerned that, based on the national reports submitted under Article 18(1) of the Directive, a significant number of EU Member States appear not to have correctly identified the facilities falling under the scope of the Directive, in particular as regards facilities that should be classified as falling under Category A;

16. Highlights the importance of obtaining information on the condition of current tailings ponds; calls on the Member States to improve the safety of dams in order to protect human health and the environment, especially in Category A facilities;

17. Stresses the importance of already involving the local communities concerned in the planning phase of extractive waste management projects using hazardous substances, and of guaranteeing transparency and the real involvement of citizens throughout the authorisation procedure and when updating a granted permit or permit conditions; reiterates the importance of the Espoo and Aarhus Conventions in this respect; calls on the Commission to provide a good practice database for the better involvement of local communities;

18. Calls on the Commission to propose more effective measures to protect the environment and citizens’ health since some Member States have proven unable so far to prevent soil and water pollution by some operators;

19. Takes note of the unnecessary administrative burden on authorities and operators as regards the management of inert waste and unpoluted soil, and calls on the Commission and Member States to avoid the duplication of authorisation processes, taking into account the sector's characteristics and the health, safety and environment implications;

20. Urges the Commission to investigate how Commission Decision 2009/335/EC has been implemented in the Member States and whether the financial security instruments established are sufficient and fit for purpose;

21. Draws attention to its resolution of 5 May 2010 on a complete ban on cyanide mining in the EU, especially in light of the weak implementation status concerning the authorisation of Category A facilities, and reiterates its call on the Commission to propose a complete ban on the use of cyanide mining technologies in the European Union as soon as possible, especially in light of the availability of non-toxic alternatives such as cyclodextrin\(^1\); requests that Member States immediately ensure the best possible management of cyanide

\(^1\) Liu et al. (2013) ‘Selective isolation of gold facilitated by second-sphere coordination with α-cyclodextrin’, Nature Communications
Urges businesses and the relevant competent authorities to consider available advanced technologies during the process of permitting extractive waste facilities, especially as regards the design of tailing dams, in compliance with the highest environmental standards; calls on the Member States to collect and analyse the data provided for the permit procedure, to compare these with the actual environmental impacts of an operating mining waste facility and, where necessary, to make any necessary corrections to the permit requirements;

Calls on the Commission to ensure sufficient financing for research and innovation in the field of the management of mining waste facilities in order to improve the safety of those facilities;

Calls on the Commission to use the opportunity of the ongoing Best Available Techniques Reference Document (BREF) review in the context of the ‘circular economy’ concept to give priority to higher environmental standards and resource efficiency when defining best practices to be included in the mining waste management plans;

Calls on the Commission to encourage the recovery of critical raw materials also from mining waste, as defined in the EU Action Plan for the Circular Economy;

Regrets the trend in mining to turn to lower-grade and deeper resources in Europe, which results in the extraction of more material in order to produce the target metal; requests that Member States utilise waste rock in the best possible way to replace virgin rock material where possible; is very concerned about the process efficiency of chemical processing, as a lower ore/host-rock ratio means that more tailings, and thus mining waste, will be produced per tonne of target metal;

Emphasises that, in view of the EU’s transition towards a circular economy, reducing the use of resources and fostering reuse and recycling are key; calls on the Commission to consider setting targets to this end based on a life-cycle assessment;

Emphasises that ‘comprehensive’ extraction could be made the leading principle, considering, however, technical and market constraints, as well as potential indirect costs, such as the CO2 footprint; suggests that waste from mining and milling be analysed and segregated for disposal in order to facilitate its later recovery;

Calls on the Commission and the competent authorities in the Member States to further invest in research and development in alternative viable processes to supply the EU with raw and secondary raw materials and to prevent waste from mining activities;

Emphasises that the historical heritage of abandoned mining waste facilities could, in the medium or short term, potentially pose a serious threat to human health or the environment; calls on the Commission to display full transparency in clarifying all the derogations from the Directive provided to Member States and the gaps that remain in relation to historical waste sites and their remediation; calls in this regard on the Commission, together with the Member States, to come up with an action plan on the full rehabilitation of these sites, taking into account examples of best practices and the possible advantages of the ‘circular economy’ concept if applied to the management of
waste from extractive industries, and including arrangements to monitor the post-closure phases of these sites;

31. Instructs its President to forward this resolution to the Council and the Commission.
EXPLANATORY STATEMENT

The objective

Directive 2006/21/EC on the management of waste from the extractive industries (hereinafter the ‘Directive’) was adopted in the aftermath of two major accidents involving the spill of hazardous extractive waste in 1998 and 2000. It provides measures, procedures and guidance to prevent and reduce as far as possible any adverse effects on the environment and human health resulting from the management of extractive waste. The Directive lays down more stringent requirements towards the so-called “Category A” facilities whose improper management could give rise to ‘major accidents’ i.e. those leading to a serious danger for human health and/or environment.

Extractive waste activities as well as the waste that they generate have long been of particular interest to the European Parliament: several parliamentary questions have been addressed to the European Commission, several petitions of citizens were considered by the parliamentary Committee on Petitions, a number of hearings and debates were held and many resolutions were adopted over the last years. In particular, in its resolution of 5 May 2010, the European Parliament asked for a general ban of cyanide in mining technologies1. However, a subsequent legislative proposal was refused by the European Commission as it was of the view that the existing body of EU legislation is sufficient, if properly implemented, to prevent accidents and to largely mitigate their consequence. In 2015, another parliamentary resolution on the lessons learned from the red-mud spill in 2010 identified the Directive as “an area of particular concern”2.

Against this background, it seemed necessary to research and assess the practical implementation of the transposed Directive as part of the ENVI Committee’s scrutiny activities. In order to support the work of the Committee, the European Parliamentary Research Service prepared a European Implementation Assessment study.

Key findings and recommendations on implementation

The deadline for transposition of the Directive expired on 1 May 2008. As from this date Member States are held responsible for ensuring that all requirements of the Directive are met in practice.

The key finding of this report is, that Member State (EU-273) have experienced some kind of transposition problems in terms of ‘timing’ or ‘quality’, or both, thus proper implementation of the Directive cannot be expected in practice in all Member States, given that there are on-going ‘non-conformity’ infringement procedures. It was hence recommended that the process of transposition of the Directive (from ‘quality point of view’) is completed as soon as possible.

It appears that the majority of Member States have adopted the measures needed to implement the provisions set out in the Directive. However, the practical implementation of the relevant

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1 EP resolution from 5 May 2010.
2 EP resolution from 8 October 2015.
3 This conclusion holds true for the 27 countries, which, as per the date of expiry of the deadline for transposition of the Directive on 1 May 2008 were Members States of the European Union, and does not refer to Croatia, which joined the EU on 1 July 2013.
provisions and inspections is still problematic. The little available evidence demonstrates that there are practical problems with external emergency plans (for Category A facilities), as well as with permits and inspections (for all types of facilities, including Category A ones). Therefore, the earliest issuance of general guidance on the implementation of the provisions set out in the Directive, as envisaged by the Commission in its implementation report of 6 September 2016 is of utmost necessity.

As to the inspections, the Directive does not explicitly define its concept nor set out in detail how an inspection should be carried out. Although the Commission has adopted almost all required implementing measures enabling the practical implementation of the Directive, a key document, which is the ‘guidelines on inspections’, is still missing. The lack of such guidance is problematic because it may lead to differences in the approaches followed by Member States as regards inspections. As a result, the objectives of the Directive could not be equally achieved by all Member States, i.e. effectiveness vary from one Member State to another. Furthermore, the lack of a uniform inspections approach across the EU implies differences in terms of compliance and enforcement costs, and hence for different levels of efficiency of the implementation of the Directive from one Member State to another. It was hence recommended that the Commission should adopt the guidelines on inspections as soon as possible.

The current reporting system under the Directive, and the triennial reporting by Member States under Article 18(1) of the Directive in particular, is not fit for purpose because it does not allow for the full picture of practical implementation to be outlined, monitored and assessed at EU level. More specifically, the data collection tool (questionnaire) suffers from several deficiencies, as shown by the available research. They need to be corrected:

- firstly, as a matter of priority, so as to feed the monitoring and evaluation of practical implementation with reliable data, and
- secondly, as a matter of urgency, to ensure that the third implementation period (2014 - 2017) will not be reported by Member States under the same deficient tool.

In addition, currently, there is no database on extractive waste facilities at EU level and such could not be created following the current reporting mechanism. This makes the monitoring of facilities, and, hence, the assessment of practical implementation, difficult.

**Citizens’ interest in implementation**

Overall, the quality of available data did not allow for the full picture of practical implementation of the directive to be duly outlined and assessed. While EU legislation on the management of extractive waste is still relevant to real needs, especially for local communities living in the close vicinity of large-scale mining projects involving dangerous substances, the practical implementation of the Directive may not guarantee the expected level of safety originally targeted by the legislator.

In light of the above conclusion, your rapporteur intends to draw the attention to justified interests of local communities affected by potential harmful effects of mining waste facilities. Their past experience implies that extractive waste management tends to be considered as a stand-alone activity, outside the complex issue of extractive industries. This approach can

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ignore the precautionary principle and the real involvement of the local communities, which impedes the realistic assessment of the costs and risks generated by modern open pit mining. This implementation report provides a unique opportunity to give recommendations on how to improve the Directive in this respect.

**Extractive waste in the context of circular economy**

While extractive waste accounts for one third of the waste generated in the EU, the Directive did not set any targets as regards extractive waste volumes. Similarly, although the extraction of primary earth resources and the management of remaining waste would fit into the context of the ‘circular economy’, the Directive was not scheduled for revision in the 2015 Commission ‘Circular economy’ package, either. Thus, putting extractive waste management in the context of ‘circular economy’ was considered important to this implementation report, as this policy switch would affect the way mineral resources are extracted and treated, and hence the way extractive waste is managed, i.e. it would impact the practical implementation of the Directive.

**Technologies involving high environmental and health risks**

Based on an expert ‘desk-research’ paper, the rapporteur has also made an attempt to explore the alternatives to technologies involving high environmental and health risks related to the improper management of the waste from extractive industries.

In terms of currently used extractive and waste management techniques, the majority of the processes might be considered mature and safe provided they are implemented following regulatory requirements. However, for existing operations there may be discrepancies between the implementation as designed and as built. The reasons for this include economic pressures that may lead to ‘cutting corners’ and an inadequate regulatory oversight that redresses such situations. Another reason is that many facilities have existed for years or even decades and were not constructed according to what is considered today as ‘best practice’. These may constitute legacy situations that are technically difficult and costly to resolve.

The rapporteur is of the view that the concept of BAT shall be re-considered to avoid ‘best’ meaning only ‘usual practice’, even when this can be demonstrably inadequate. When defining ‘best practices’, especially those involving high environmental and health risks, the rapporteur advocates the use of the results of past and ongoing research activities, cutting edge innovations in waste electrical and electronic equipment (WEEE) recycling and the lessons learned from tailings dam failures worldwide, as well as to give priority to higher environmental standards and resource efficiency, even if these are more costly, thus eliminating the ‘lowest cost-most prone to failure’ technology options.

**Acknowledgements**

1 In fact, extractive waste is dealt with under the Action Plan accompanying the package, where the Commission took two main commitments.
2 The study was drafted by Dr Eberhard Falck between February and May 2016, upon request of DG EPRS, and published under Annex I of the European Implementation Assessment study under the title: “Exploring the alternatives to technologies involving high environmental and health risks related to the improper management of the waste from extractive industries. Challenges, risks and opportunities for the extractive industries arising in the context of the circular economy concept”.

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Finally, the rapporteur would like to acknowledge the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament’s Directorate General for Parliamentary Research Service for the in-depth European Implementation Assessment and thank the European Commission for the cooperation in exploring data on implementation in the 28 Member States. He thanks the shadow rapporteurs for their active involvement, as well as the different stakeholders, national authorities, civil society representatives and business associations for their position and consultation, which all formed valuable contributions to this implementation report.
## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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|                  | 0: 0      |
| Substitutes present for the final vote | Nikolay Barekov, Nicola Caputo, Stefano Maullu, Gesine Meissner, Elżbieta Katarzyna Łukacijewska |
| Substitutes under Rule 200(2) present for the final vote | Jan Keller, Arne Lietz |
## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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<td>Marco Affronte, Margrete Auken, Bas Eickhout, Benedek Jávor, Michèle Rivasi, Davor Škrlec</td>
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Key to symbols:
+ : in favour
- : against
0 : abstention