

Newsletter n°1  
September 2003

## EU-LEGISLATION

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### Impression:

**Euromines 2003**

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*If any of the regions are interested to put forward articles or information from their region we encourage to do so in the newsletter.*

## NEWSLETTER N°1 - EU-LEGISLATION -

### 1. THE EUROPEAN NETWORK OF MINING REGIONS

During spring 2003 an initiative was taken by the North Sweden European office, the European North Lapland-Oulu and Euromines to explore the interest for establishing European network for mining regions. A first preparatory meeting was held in June and showed that there is interest for a forum where experiences and knowledge can be exchanged. One of the objectives of the network is also to profile the mining regions and their special conditions.

In the European context, mining regions often face similar challenges (e.g. implementing European legislation, environmental issues). This first newsletter will focus on EU-legislation and especially the upcoming directives on the management of waste from the extractive industry.

Editor Chapter 1-4:  
Patrik Roos, Euromines.  
tel. +32 (0)2 775 63 38  
email: [euromines.assistant@euromines.be](mailto:euromines.assistant@euromines.be)

#### *1.1 WG European Network of Mining Regions*

The working group has had several meetings and is now preparing a meeting about "EU-legalisations and restructuring". The meeting is expected to be held in November. The date will be fixed shortly.

For more information about the network please contact:

Patrik Roos (Euromines)  
Tel: +32 (0)2 775 63 38  
Email: [euromines.assistant@euromines.be](mailto:euromines.assistant@euromines.be)

Peter Jorgensen (North Sweden European Offices)  
Tel: +46 70-601 20 50  
Email: [peter.jorgensen@northsweden.org](mailto:peter.jorgensen@northsweden.org)

Seppo Heikkila (North European Lapland-Oulu)  
Tel: +32 2 234 63 70  
Email: [seppo.heikkila@lapland-oulu.fi](mailto:seppo.heikkila@lapland-oulu.fi)

## **2. EU ENVIRONMENTAL LEGISLATION IN PROGRESS**

### **2.1 SEVESO II**

#### **Contents**

The aim of the Seveso II Directive is two-fold. Firstly, the Directive aims at the *prevention* of major-accident hazards involving dangerous substances. Secondly, as accidents do continue to occur, the Directive aims at the *limitation of the consequences* of such accidents not only for man (*safety and health aspects*) but also for the environment (*environmental aspect*).

#### **Impact on the Mining Industry**

The proposal extends the scope of the directive to cover mining activities if "dangerous substances" are involved and present in quantities above threshold levels set out in the Directive.

Active tailings disposal facilities including tailing ponds or dams that do not contain any hazardous substances other than those naturally present in the ground are not in the scope of the proposal. The Commission believes that adequate coverage of other risks from tailings disposal facilities would be better dealt with in a future initiative on the management of mining waste.

In addition, as a result of the inclusion of a "Dangerous for the Environment" substance category, certain types of mining waste and their amounts might face an inclusion in this directive in the future. As a consequence, the required periodic review of the Safety Reports, Emergency Plans, Accident Prevention Policies and Information will result in further costs to the industry. For instance, for establishments covered by the new Directive, operators will be obliged to implement a Safety Management System, which includes a detailed risk assessment on the basis of possible accident scenarios, three months after the implementation of the legislation.

For establishments covered by the new Directive, operators will also give to the authorities within a year after the implementation of the legislation:

- safety reports
- emergency plan for the measures to be taken inside the establishment
- information to enable the authorities to draw up external emergency plans
- the public and the personnel must be consulted when the emergency plans are established or updated

Land-use policies must take into account that appropriate distances should be maintained between establishments and residential areas, buildings and areas of public use, major transport routes. For existing establishments, land-use policies must take into account the need for additional technical measures.

The Commission will draw up guidelines defining a technical database to be used for assessing the compatibility between the establishments and the areas to be maintained far from them.

Concerning information systems and exchange, Member States must supply the Commission with the full contact details of the establishments concerned. The Commission will set up a database with this information, which will be accessible only to persons authorized by the Commission or the competent authorities of the Member States.

#### **Current State**

On 9 September the conciliation procedure ended with an agreement that the Directive would cover chemical and physical mineral processing and mine waste management in as far as dangerous substances were involved. This will now result in additional of administrative requirements as well as image problems for some operations due to the stigma "Seveso II-site"

### **2.2 Proposed Directive on the Management of waste from the extractive industry**

The aim of this Directive is to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular on surface water, groundwater, fauna, flora and soil as well as any resulting risks to human health from the management of waste from the extractive industry.

#### **Contents**

- To regulate waste from prospecting and extraction, treatment, and storage of mineral resources.
- Would regulate the construction, operation, closure and post-closure phase of a disposal facility.

- Would require mine and quarry operators to have a waste management plan, a major accident prevention policy and safety report, and an internal emergency plan for measures to be taken inside a mine or quarry.
- Members of the public would be entitled to information on safety measures and what to do in the event of an accident.
- Operators would have to hold a permit before mining could begin.
- Would provide for disposal facilities to be classified according to dimension and potential risk. Would oblige operators to monitor a mine after closure and minimise any environmental impact.
- To get a permit, operators would have to guarantee that they could cover the potential costs of the waste facility and post-closure requirements, based on the facility's "likely environmental impact".

#### **Impact on the Mining Sector**

Although the document is improved in comparison to the earlier draft versions there are still two issues unresolved:

1. The question whether topsoil and overburden are to be considered "waste" is not resolved,
3. The required provisions for financial insurance and guarantees may cause an enormous burden for smaller and medium sized enterprises.

#### Some important points:

- The financial guarantees need to be available at the beginning of the operation, not at the point of application for the permit or the granting of the permit. In some cases it can take years till an operation starts.
- It should be clarified that the amount of the financial guarantee, which needs to be available, should be proportional to the current environmental impact.
- This financial guarantee would need to be re-evaluated over time taking into accounts the environmental impacts and the active restoration.

#### **Current State**

In June 2003, after several months of discussions and stakeholder consultations, DG Environment tabled its new proposal for a directive on management of waste from the extractive industry.

The proposal has now been forwarded to the Parliament and the Council for consultation. The rapporteur in the European Parliament's Environment Committee will be Mr Sjöstedt, a Swedish representative.

First discussions are being prepared. It is likely that Council and Parliament will begin discussions in the autumn, but whether they will be concluded by the end of 2003 is unlikely since the issue is not a priority under the Italian presidency. It is therefore likely that the directive will be adopted under the Irish presidency, during the first half of 2004.

#### ***2.2.1 BAT on tailings and waste rock management***

In 2001 the Commission decided to establish a BAT note on Mine Waste Management to be attached to the newly proposed mine waste directive.

The proposed directive on the management of waste from the extractive industry makes reference to the BAT-document on Tailings and Waste Rock Management.

#### **Current state**

Before the summer the IPTS Bureau in Seville issued the second draft of the BAT document on tailings and waste rock management in the extractive industry. Additional consultations with accession countries and their industry's were held at a seminar in Wroclaw in Poland and in Sofia in Bulgaria.

During the next few months the received comments will be evaluated and incorporated into the draft document, which will then lead to the final documents. It is expected that its final approval and publication will take place during the first quarter of 2004.

#### ***2.3 Proposed Directive on Environmental Liability with regard to the prevention and remedying of environmental damage***

The proposal establishes a framework based on environmental liability to ensure that future environmental damage is prevented or restored.

#### **Contents**

- All operators causing damage by fault or negligence, would have an obligation of restoration.

- It would impose strict liability (i.e. without fault of the polluter) when the damage is caused by activities regulated by EU environmental legislation such as IPPC.
- Multiple parties would be liable where two or more operators caused the damage. However, if an operator can establish which part of the damage he is responsible for, then he would only be liable for that part. Where this cannot be established, operators would be subject to joint and several liabilities.
- The proposal has no retrospective effect.
- The proposal lays down a series of exceptions whereby the operator may be relieved of liability. These exceptions include damage caused by operators complying with the terms of IPPC permits, intentional acts by third parties which succeeded in spite of appropriate safety measures or using state-of-the-art technology, except in case of negligence.
- Public authorities would have to ensure that responsible operators undertake themselves or finance the necessary restorative measures in case of environmental damage.
- Cross-border damage is subject to cooperation between the national authorities of the countries affected so as to ensure that the damage is corrected in cooperation with the operator liable for the damage.

#### **Impact on the Mining Industry**

- The fact that Member States are free to decide how to best achieve the objective of restoration could raise competitiveness and Internal market issues.
- All existing mines and quarries would have to carry out a baseline study before the entry into force of the directive in order to be able to prove that any pollution coming under the directive has occurred thereafter.
- Depending on the circumstances, Article 11 on joint liability could lead to the fact that a responsible operator becomes liable for the actions of an irresponsible co-operator.

One of the most important issues for industry is that as a the defense mechanisms the following defenses are valid: compliance with an operating permit, intentional acts by third parties which succeeded in spite of appropriate safety measures, state of scientific and technical knowledge. At the moment

the discussions would only grant the permit to be an alleviating factor in law suits, but would not serve as a defense per se.

#### **Current state**

The second reading of the Commission proposal is expected for October 2003, the vote is expected in November 2003. Currently the Council is reviewing the Parliament's proposals from the first reading and is expected to publish its Common position in September 2003.

### **2.4 Directive on Groundwater**

The European Commission is in the process of developing a Directive on Groundwater, as stipulated by the Water Framework Directive.

#### **Content**

- Would repeal and replace (from 2013) Directive 80/68/EEC on protection of groundwater against pollution caused by certain dangerous substances.
- Would provide for CEC to propose within 2 years of the Directive's entry into force a list of substances (indicators) according to which groundwater quality would be assessed and monitored.
- Would provide for a list of substances that should be kept out of groundwater. "Sustained and upward trends" in levels of man-made pollutants would be measured over a minimum of 5 consecutive years for data collected twice or four times a year, or over 8 years based on annual data. Best environmental and agricultural practices would be used to control pollution.
- Would set monitoring and reporting requirements.

#### **Impact on the Mining Industry**

Although the extractive industry is largely exempted from the Framework Directive, the sector needs to ensure that the Groundwater Directive will be providing adequate provisions for the extractive industry.

Extractive Industry federations have been trying to ensure that the provisions for the extractive industry are taken over from the Water Framework directive and are introduced into the Groundwater Directive as well.

### **Current state**

A new proposal for a Groundwater directive, replacing the existing Directive 80/68/EEC, is expected for September 2003. This directive proposes a list of substances according to which groundwater quality should be assessed and monitored. It would provide a list of substances that should be kept out of groundwater.

The directive would come into force two years after adoption and require measurements over a minimum of 5 consecutive years with data collected 2 or 4 times per year, or over 8 years based on annual data.

The first reading in Parliament is expected to begin in the 4th quarter of 2003.

## **3. R & D: THE EU'S 6<sup>TH</sup> FRAMEWORK PROGRAMME PROGRESS**

### ***3.1 The EU's Sixth Framework Programme and its first call for proposals***

In May 2003 was the first deadline for the first call for proposals of Integrated Projects and Networks under the EU's Sixth Framework Programme on RTD.

The extractive industry prepared a major proposal called MISTRESS, which however, was not accepted by the Commission due to various reasons. Learning from the evaluation of this first proposal and additional information obtained from the Commission in the meantime the sector is now preparing to respond to various new calls being launched in the second half of this year and in spring 2004.

Most of the coordination is carried out through the NESMI network.

### ***3.2 NESMI- Network for the Sustainable Development of the Mining Industry***

NESMI (Network on European Sustainable Mining and Processing Industries) is the new EU funded research network for the extractive industry. The network is exploring the research needs of the sector, develops tools for better access to research results on the one hand and research funding on the other. It provides a platform for discussions and organisation of new research projects and proposals.

NESMI on Internet: [www.nesmi.net](http://www.nesmi.net).

## **4. UPCOMING ISSUES**

The European Commission has developed an enormous range of activities over the past 6 – 10 months, which can only be explained with the intention of passing as much legislation as possible before the accession of Eastern Europe.

This also explains a large number of policy and communication documents which intend to lay the foundations for future directives and regulations.

In light of this increased activity it is worthwhile, although sometimes scary, to look ahead and to identify the upcoming proposals and assess them for their potential relevance for the extractive industry sector;

We would therefore like to include here an outlook on upcoming directives and communications that will have to be monitored and influenced.

- **Communication on natural and technological risks (September 2003)**
- **Directive on the access to justice (September 2003)**
- **Framework proposal for environmental infrastructure for spatial information in Europe (INSPIRE) (October 2003)**
- **Future technologies for clean vehicles (3rd quarter 2003)**
- **Heavy-duty vehicles 3rd quarter 2003)**
- **Communication on an Annual Environmental Policy Review to be provided by the Commission to Council and Parliament (November 2003)**
- **Environmental reporting (November 2003)**
- **Communication on standardisation and the environment (December 2003)**
- **Updated report on Directive 99/96/EC on NOx emissions from vehicles (4th quarter 2003)**
- **Communication on sustainable production and consumption (1<sup>st</sup> quarter 2004)**
- **Pollutant Release and Transfer Register: implementation of the UN Protocol (1<sup>st</sup> quarter 2004)**
- **Directive on Pipeline safety (2004)**
- **Air Quality: Clean Air for Europe (2004)**
- **Cadmium in fertilisers (2nd Quarter 2004)**
- **Thematic Strategy on Marine environment (2nd half of 2004)**
- **Revision of Drinking Water Directive (2005)**
- **Sustainable Development Strategy (no date yet)**
- **Strategy on the use of mercury (no date yet)**
- **Communication on environmental targets for transport (no date yet)**

On 3<sup>rd</sup> / 4<sup>th</sup> November NESMI will hold its annual conference in Prague under the title of

<b>Research and Technological Development for a Sustainable extractive industry in the EU and candidate countries</b>		
<b>-- A new perspective on the material supply chain in Europe --</b>		
<b>Date</b>	<b>Time</b>	<b>Subject</b>
<b>Sunday, 02/11/03</b>	PM	Visit of Prague (optional, not included in registration fee)
<b>Monday, 03/11/03</b>	09:00 – 10:00 10:00 – 10:20 10:20 – 10:40 10:40 – 11:00 11:00 – 11:20 11:20 – 11:45  11:45 – 12:10 12:10 – 12:35 12:35 – 13:00 13:00 – 14:00 14:00 - 16:00 16:00 – 16:15 16:15 - 18:00 20h00	Registration Opening by Mr Adjemian, DG Research, European Commission Welcome speech by Mr Makarius, Czech Mining Administration Update by Dr Hejny, NESMI Coordinator Coffee break Keynote presentation: Research requirements for the extraction industry by David Richards, Rio Tinto Industry & Research: Hungary, Prof Csöke Industry & Research: Czeck Republic, Mr Horak Industry & Research: Poland Lunch 5 parallel workshops, part I: oral presentations Coffee break 5 parallel workshops, part II: discussion Dinner
<b>Tuesday, 04/11/03</b>	09:00 – 10:30 10:30 – 11:00 11:00 – 12:45  12:45 – 13:00 13:00 - 14:00 14:00 – 17:00	Summary workshops 1 – 5 Coffee break Roundtable discussion with EU commission, candidate countries' governments, industry and research institutions Closing remarks Lunch Visit to Kutna Hora

For more information and questions about the NESMI conference in Prague 3-4 November 2003 please contact:  
[nesmi-conference@euromines.be](mailto:nesmi-conference@euromines.be)