LEGAL OPINION

EXTRACTIVE WASTE DIRECTIVE
&
THE NECESSITY OF REVISION

7 March 2024

Introduction

Transport and Environment (hereafter: T&E) has requested a legal analysis about the necessity to improve Extractive Waste Directive (EWD) to face shortcomings of the EWD and to cope with the increased European ambitions to extract primary raw materials for battery production within Europe

T&E foresees that the Directive needs to be brought up to best practices, specifically with regards to the design and management requirements for tailings.

This analysis addresses several shortcomings of the Extractive Waste Directive, sets outs some limitations of the Best Available Techniques Reference Documents (BREFs) and provides recommendations for an improved legal framework governing extractive waste. The conclusion is that an Extractive Waste Regulation with more concrete obligations is necessary.

The EWD does not apply to the phase of recycling of batteries. The increased ambitions on that subject will not be addressed in this Legal Opinion.

Shortcomings of the Directive

The EWD contains several rules that could apply on the practice of extractive waste effectively. For example, article 14 demands **financial guarantees** (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent by the operator for all obligations arising from the permit, including provisions after closure of waste facility and provisions related to rehabilitation of the land affected by the waste facility.

With article 15 the connection is made between the EWD and Directive 2004/35 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. That last mentioned Directive contains obligations in case of '*environmental damage*', meaning damage with **significant adverse effects** on: (a) protected species and natural habitats (Birds Directive and Habitat Directive), (b) the ecological, chemical and/or quantitative status and/or ecological potential of waters (Water Framework Directive). It also applies to (c) land damage, but then limited to significant risks of human health.

Further on, the EWD contains certain imperative information and procedural obligations, like article 11 paragraph 3: the operator shall, without undue delay and in any event not later than 48 hours thereafter, notify the competent authority of any events likely to affect the stability of the waste facility and any significant adverse environmental effects revealed by the control and monitoring procedures of the waste facility. Also the public has the right to be informed about permit requests and changes of permits (article 7).

However, several provisions of the EWD describe a margin of appreciation that is very broad, which could lead to significant environmental, safety and human health related risks in practice. This section gives an overview of the some problematic provisions and includes examples of the issues they cause in the field.

First, article 4 could be questioned.

Article 4

General requirements

1. *Member States **shall take the necessary measures to** ensure that extractive waste is managed without endangering human health and without using processes or methods which could harm the environment, and in particular without risk to water, air, soil and fauna and flora, without causing a nuisance through noise or odors and without adversely affecting the landscape or places of special interest. Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled depositing of extractive waste.*
2. *Member States shall ensure that the operator **takes all measures necessary** to prevent or reduce as far as possible any adverse effects on the environment and human health brought about as a result of the management of extractive waste. This includes the management of any waste facility, also after its closure, and the prevention of major accidents involving that facility and the limiting of their consequences for the environment and human health.*
3. *The measures referred to in paragraph 2 shall be based, inter alia, on the **best available techniques**, **without prescribing the use of any technique of specific technology, but taking into account the technical characteristics of the waste facility, its geographical location and the local environmental conditions.***

The phrases *'Member States shall take the necessary measures to (…)'* and *'Member States shall ensure that the operator takes all measures necessary to (…)'* seem to prescribe measures, but this does not seem to fit with the almost complete freedom of paragraph 3. In other words, the filling in of the '*necessary measures'* is largely dependent of willingness and opinions of the local authorities.

A good formulation should, at least, go the other way around: *"the measures are prescribed by the best available techniques, unless compelling local conditions are leading to a concrete need for (the licensing and/or law enforcement authority of) a Member State a reasoned deviation".*

Not only does article 4 consequently lead to very diverging levels of protection in different States, it also leads to inadequate protection in some.

One example includes that of the *Minas de San Finx* mine in Spain. The development project and restoration plan of the mine failed to provide the adequate treatment of acid mine drainage prior to its discharge in a nearby river. These discharges have led to illegal concentrations of heavy metals in the estuaries and threatens the livelihood of 1.500 families that depend on the area. A request for a discharge permit was finally considered necessary by the authorities in 2016, but the procedure was kept open for seven years.

Second, the Directive does not set out a strict hierarchy between prevention and reduction of waste.

Article 5

Waste management plan

1. *Member States shall ensure that the operator draws up a waste management plan for the minimization, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.*
2. *The objectives of the waste management plan shall be:*
    a. ***to prevent or reduce waste production and its harmfulness**, in particular by considering: (…)*
    b. *(…)*
    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:*
        i. *requires **minimal and, if possible, ultimately no monitoring**, control and management of the closed waste facility;*
        ii. *prevents or **at least minimizes any long-term negative effects**, for example attributable to migration of airborne aquatic pollutants from the waste facility; and*
        iii. *ensures the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.*
3. (…)

Instead of aiming for the prevention of waste production and its harmfulness, the Directive allows reduction just as well (provision 5 sub 2). This is an example of the same legislative technique as described above: first it seems to prescribe a strict rule of prevention, but while allowing reduction – at the same time - the prescription of prevention is an empty shell. The current provisions insufficiently prescribe a zero tolerance policy towards environmental harm.

A stronger formulation should be chosen, like: *"1. The objectives of the waste management plan shall be to prevent waste production and its harmfulness, unless compelling local conditions prohibit prevention. Only that case prevention could be redeemed for reduction."*

The condition that the design of a waste facility needs to ensure that monitoring after closure is not, or only minimally, necessary (provision 5 sub 2 under c), could lead to a high degree of non-committal: **environmental destruction that occurs at later stages, may long go undetected**.

Protection of human health and the environment is not adequately guaranteed in other provisions, in our opinion. Article 6 sub 2 merely requires Member States to ensure that *'the necessary features are incorporated'* to prevent major-accident hazards and limit their adverse consequences. Member States and operators **seem to have the freedom to choose the 'necessary features' themselves**. Effects of incidents need to be minimized but, again, no zero tolerance policy is prescribed.

Article 6

Major-accident prevention and information

1. *(…)*
2. *Without prejudice to other Community legislation, and in particular Directives 92/91/EEC and 92/104/EEC, Member States shall ensure that major-accident hazards are identified and that **the necessary features** are incorporated into the design, construction, operation and maintenance, closure and after-closure of the waste facility in order to prevent such accidents and **to limit their adverse consequences** for human health and/or the environment, including any transboundary impacts.*
3. *For the purposes of the requirements under paragraph 2, **each operator shall**, before the start of operations, **draw up a major-accident prevention policy** for the management of extractive waste and put into effect a safety management system implementing it, in accordance with the elements set out in Section 1 of Annex I, and shall also put into effect an internal emergency plan specifying the measures to be taken on site in the event of an accident. (…)*
4. *The emergency plans referred to in paragraph 3 shall have the following objectives:*
    a. *to contain and control major accidents and other incidents so as **to minimize their effects**, and in particular **to limit damage to human health and the environment**; (…)*
    b. *to implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;*
    c. *to communicate the necessary information to the public and to the relevant services or authorities in the area;*
    d. *to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.*

    *Member States shall ensure that, in the event of a major accident, the operator immediately provides the competent authority with all the information required **to help minimize its consequences for human health and to assess and minimize the extent, actual or potential, of the environmental damage**. (…)*

Paragraph 4 is not complete, while it does not seem to contain the obligation to prevent major accidents during a stage of accidents. Moreover, **questionable is why the information to the public is limited to the situation of major accidents.** Although, this situation already should apply when the management of extractive waste is leading to a *'serious danger to human health and/or the*

environment, whether immediately or over time, on-site or off-site', it will certainly not be used in situations of slow, long lasting or difficult to prove pollution or in situations that are covered by permits.

> An example of the lack of information provided to the public can be found with regards to the *Minas de Riotinto* mine in Spain. Here key environmental documents were not submitted for public participation and the Andalusian Supreme Court eventually had to annul the permit granted to restart mining activity in 2015.[1]

An important shortcoming is also that there isn't a real obligation to update the prevention plan periodically. Even better would be to formulate strict terms, for example that prevention plans should be updated every two years.

Uncertainty could appear about who is bearing the responsibility and/or costs for clean-up and/or restoration can create a legal vacuum because of which pollution and/or environmental destruction could long go unaddressed. In our opinion, the **more or less silent assumption** of this Directive and the explicit assumption of the Environmental Liability Directive, **that liability is lifted by the prescriptions of a permit, should be reconsidered**.

In fact, both operator and Member State should be kept jointly and severally liable, in such cases, in our opinion. The precise distribution of liability could be something between the operator and the Member State further on. Environment and public should never become a victim of such discussions.

This is all the more the case, while Member States seem to be left free to decide on the measures implemented to ensure that permit conditions are regularly revised and adjusted (article 7 sub 4).

Article 7

Application and permit

1. *No waste facility shall be allowed to operate without a permit granted by the competent authority. The permit shall contain the elements specified in paragraph 2 of this Article and shall clearly indicate the category of the waste facility in accordance with the criteria referred to in Article 9. (…)*
2. *(…)*
3. *(…)*
4. *Member States **shall take the necessary measures** to ensure that competent authorities periodically reconsider and, where necessary, update permit conditions:*
    - *where there are substantial changes in the operation of the waste facility or the waste deposited;*

[1] Iberian Mining Observatory, Minas de Riotinto

- *on the basis of monitoring results reported by the operator pursuant to Article 11(3) or inspections carried out pursuant to Article 17;*
- *in the light of information exchange on substantial changes in best available techniques under Article 21(3).*

5. *(…)*

Member States are, again, merely required to '*take the necessary measures'* to ensure that permits are adequately updated, but **nowhere seems to be described what 'periodically' means**. Also no penalty is prescribed if Member States or operators fail on this point. **We propose that permits should be updated or reconsidered every four years.**

A similar broad margin of appreciation exists with regards to placing extractive waste back into excavation voids. *'Appropriate measures'* need to be taken to secure stability, prevent pollution, and ensure monitoring (article 10 sub 1), but what is deemed appropriate is left for Member States to decide.

Article 10

Excavation voids

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 water and groundwater in accordance, mutatis mutandis, with Article 13(1), (3) and (5);*
    3. *ensure the monitoring of the extractive waste and the excavation void in accordance, mutatis mutandis, with Article 12(4) and (5).*
2. *(…)*

Article 10 seems to provide quite strict conditions on stability, prevention and monitoring. Nevertheless, the question comes up whether also this article is providing **a too broad authority to decide where to locate extractive waste facilities, how to design the facility, how frequently to engage in monitoring, and how to rehabilitate the land** (article 11 sub 2).

The broad margin of appreciation has led to various issues, which can be illustrated by several examples from Spain. One example is the periodic incidents of pollution associated with the *Mina da Penouta* mine in Spain. This mine is associated with a critical failure of the tailings dam in 1975, which led to an environmental disaster. Agricultural lands were severely polluted and drinking water supplies have faced periodic disruption, as recent as in 2020. The mine was abandoned in 1987, **without restoration**, and a plan to reprocess the site was presented in 2012. However, the restoration plan proposed **failed to include effective measures for the treatment of acid mine drainage.**

The Environmental Impact Assessment **did not include considerations regarding an affected Natura 2000 site and water impacts**. Pollution of nearby rivers therefore continued.[2]

The example of the *Minas de San Finx* mine in Spain illustrates inadequate considerations regarding the location of the mine. The mine is situated 7 km upstream from the Natura 2000 Muros-Noia estuary. Consequential to the re-opening of the mine in 2009 and the continued discharge of inadequately treated mine drainage in the river, cadmium, copper and zinc concentrations in the river are above maximum allowable limits. Not only does this affect the natural circumstances, it also threatens the livelihood of over 1.500 families that depend on the estuary as area for shellfish gathering.[3]

In addition, the *Mina de Las Cruces* mine in Spain is located near an aquifer that functions as a strategic emergency reserve for the city of Seville. As a result, the aquifer is contaminated with arsenic.[4]

Article 11

Construction and management of waste facilities

1. *(…)*
2. *The competent authority **shall satisfy itself that**, in constructing a new waste facility or modifying an existing waste facility, the operator ensures that:*
    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/ECC, 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 water or wind as far **as it is technically possible and economically viable**;*
    b. *the waste facility **is suitably constructed, managed and maintained** to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimize as far as possible damage to the landscape;*
    c. *there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results indicating instability or water or soil contamination;*
    d. ***suitable arrangements are made** for the rehabilitation of the land and the closure of the waste facility;*
    e. ***suitable arrangements** are made for the after-closure phase of the waste facility.*

(…)

[2] Iberian Mining Observatory, *Mina da Penouta*

[3] Iberian Mining Observatory, *Minas de San Finx*

[4] Iberian Mining Observatory, *Mina de Las Cruces*

Article 11 paragraph 2 is too weak in our opinion. **Law enforcement on mining and recycling industry is not *'to satisfy the competent authorities'*, but should be related to objective, harmonized principles and benchmarks.** Furthermore, clauses such as '*as it is technically possible and economically viable'* are killers for strict permits, law enforcement and legal participation by the public and ngo's.

Article 12

Closure and after-closure procedures for waste facilities

1. *(…)*
2. *(…)*
3. *A waste facility may be considered as finally closed only **after the competent authority has**, without undue delay, **carried out a final on-site inspection, assessed all the reports submitted by the operator, certified that the land affected by a waste facility has been rehabilitated** and communicated to the operator its approval of the closure.*
   The approval shall not in any way reduce the operator's obligations under the conditions of the permit or otherwise in law.
4. *The operator shall be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for **as long as may be required by the competent authority**, taking into account the nature and duration of the hazard, save where the competent authority decides to take over such tasks from the operator, after a waste facility has been finally closed and without prejudice to any national or Community legislation governing the liability of the waste holder.*
5. ***When considered necessary by the competent authority**, in order to fulfil relevant environmental requirements, set out in Community legislation, in particular those in Directive 76/464/EEC, 80/68/EEC and 200/60/EC, following closure of a waste facility, the operator shall, inter alia, control the physical and chemical stability of the facility and minimize any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that:*
   a. *all the structures pertaining to the facility are monitored and conserved, with control and measuring apparatus always ready for use;*
   b. *where applicable, overflow channels and spillways are kept clean and free.*
6. *(…)*
   *I**n 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 behavior.*

Questionable is that the closure of an extractive waste facility occurs at the discretion of the competent authority in the Member State, without prescription of quality criteria by the Directive. The competent authority thereby relies on reports submitted by the operator (article 12 sub 3). It could ask the operator to ensure maintenance, monitoring and control after closure for as long as the authority deems necessary (article 12 sub 4 and 5). Monitoring results only have to be relayed where the authority so requires

(article 12 sub 6). And what will happen if activities are minimized, but the facility will not be closed explicitly?

The above paragraphs show that under the current EWD Member States are almost completely free in their discretion and acts, in fact. Again, the rules seem to be in order, but the focus on the discretion of authorities could bring along that these rules again will be an empty shell.

With the focus on *'the consideration'* of *'determination'* of the local authorities, **a role for the interests of the EU, the interests of other operators Member States ('*level playing field*') and the interests of the public and the environment itself seems to be absent at the same time.**

This way of legislation conflicts with the fact that the closure of any plant and issues about monitoring and liability could be objectively formulated, par excellence, and should not be paired to the willingness of local authorities. Why is liability limited by the permit and the judgement of the local authorities after closing the facility? **Why not being liable for all activities, including hundred years after closure?**

With regards to the protection accorded to water, air and soil, the Directive thereby merely refers to the need for operators to take *'adequate measures'* (article 13 sub 1, 2, 5 and 6). These measures thereby do not necessarily have to be focused on the prevention of water status deterioration or soil pollution, but can aim for the mere minimalization thereof (article 13 sub 5). Reference is made to the best available techniques only with regards to ponds with cyanide, whereby no specifications are provided for how the *'lowest possible level'* of weak acid that should be aimed for is determined (article 13 sub 6).

Article 13

Prevention of water status deterioration, air and soil pollution

1. *The competent authority **shall satisfy 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, by: (…)*
2. *The competent authority shall ensure that the operator **has taken adequate measures** to prevent or reduce dust and gas emissions.*
3. *(…)*
4. *(…)*
5. *When placing extractive waste back into excavation voids, whether created through surface or underground extraction, which will be allowed to flood after closure, the operator **shall take the necessary measures** to prevent **or minimize** water status deterioration and soil pollution in accordance, mutatis mutandis, with paragraph (1) and (3). The operator shall provide the competent authority with the information necessary to ensure compliance with Community obligations, in particular those in Directive 2000/60/EC.*

6. *In the case of a pond involving the presence of cyanide, the operator shall ensure that the concentration of weak acid dissociable cyanide in the pond is reduced **to the lowest possible level** using best available techniques (…).*

Member States are also free to decide on the frequency of inspections after closure (article 17 sub 1), penalties (article 19) and are merely prescribed to aim for the minimalization of transboundary effects (article 16 sub 3),

All in all, the Directive **falls short of prescribing specific, objective measures not only to protect the environment and human health, but also to realize EU-harmonization**. It thereby often prescribes a level of protection that is not aimed at prevention of damage, but mere minimalization, and such only on the discretion of the local authorities. It allows for a broad margin of appreciation that has led to diverging levels of implementation in Member States. The result is a materialization of risks and damage to both the environment, human health and the commercial level playing field.

Finally, rules about the suspension and withdrawal of permits seem to miss. Of course mostly national law will foresee in such procedures, but **would it not be wise to formulate a withdrawal- and suspension-framework in the EU-rules**?

And why is **liability of operators limited to significant effect** on the interest of the Bird Directive, Habitat Directive, Water Framework Directive and soil pollution affecting human health? Why isn't the definition of environmental pollution much broader than this?

Are these problems coped by BREFs?

The Directive references the best available techniques as means to prevent or reduce adverse effects on the environment and human health, and thereby aims to prescribe a minimum requirement for the necessary measures to be implemented. The measures set out in the BREF document related to the management of extractive waste (the MWEI BREF) aim to provide a guideline for the best available techniques for the sector. These are, however, not exhaustive nor prescriptive:

> *"the techniques listed and described in this chapter **are neither prescriptive nor exhaustive** and (…) other techniques may be used that ensure at least an equivalent level of environmental protection."*[5]

This leaves leave room for parties to justify the selection of any measure based on their own preference. It is thereby unclear **who is to determine what this 'equivalent level of environmental protection' is** and on what grounds.

[5] BAT Reference Document for the Management of Waste from Extractive Industries, 2018 p. i

The BREF-document can thereby not be relied on for legal interpretation:

> *"This document **does not provide legal interpretation**, nor should it be used to such purpose. It aims to provide technical information related to BAT referring to a broad range of materials and processes."*[6]

This means that the MWEI BREF **offers little support for challenging the inadequate protectionary measures implemented** in Member States.

The inadequate level of environmental and human health protection provided by the Directive is aggravated by the fact that the current MWEI BREF of 2018, being **not up-to-date**. Consequently, the best available techniques prescribed by the Directives, are assumably not actually the best available techniques of 2024 and the future.

At a minimum it is thus important **to update the MWEI BREF and to delete the loophole** that the BREF conditions *'are neither prescriptive nor exhaustive'.*

An ad-hoc working group (a Technical Working Group) is responsible for such an update[7]:

> For each sector, an ad-hoc working group updates the existing norms, after a detailed examination of all the facts and data related to the use of the latest state of the art processes and technologies. It is an extensive, inclusive and transparent exchange of information between stakeholders to define new Best Available Techniques and to discuss their inclusion in the reference documents on Best Available Techniques (the BREFs). Finally, Member States vote on these conclusions that will become environmental legislation after their formal adoption by the European Commission.

In fact, the MWEI BREF of 2018 specifies that data collection for a future review should have started as soon as the document was published.

[6] BAT Reference Document for the Management of Waste from Extractive Industries, 2018 p. i

[7] Sevilla Process, European IPPC Bureau

It is thereby worth mentioning that the MWEI BREF of 2018 had been based on **data collection regarding merely one year of reference**:

> These efforts should also help to address a number of issues in the next review of the MWEI BREF:
> - related to the representativity of the data:
>   - to identify with the TWG sufficient and representative sites for the management of each type of extractive waste (extractive waste resulting from extraction of the main mineral resources);
> - related to the treatment of EWIW and emissions to water:
>   - to improve data collection allowing for a more in depth understanding of the links between site specific conditions (e.g. geological background) and the different applied techniques in view of determining achievable performances;
>   - to collect data on total metal content in EWIW (dissolved and undissolved metals);
>   - to collect information on the salt content in EWIW and its effect on the efficiency of pollutant treatment/removal (especially for biological treatments such as passive wetlands or biological reactors);
>   - to collect data for several years and not only one year of reference (if possible to collect data before and after any major improvement in the extractive waste management or EWIW treatment);
>   - to collect data on 95^{th} or 97^{th} percentile levels of pollutants in EWIW;
>   - to collect data and information on background levels of pollutants at the specific site.

Source: MWEI BREF page 602

It seems clear that at least the BREF-document related to the management of waste from the extractive industries requires an update to ensure that protection standards are actually up to date with technological capabilities.

Conclusion and recommendations for an improved framework of rules

The EWD provides a very broad discretion to local authorities on several aspects and does not provide a waterproof contribution to concrete prevention, minimization, rehabilitation, monitoring, disclosure of information, liability and EU-harmonization – before, during and after the activities.

The BREF document related to the management of extractive waste (the MWEI BREF) is very comprehensive, but does not close the legal gaps of the EWD, by being neither prescriptive nor exhaustive and not providing legal interpretation.

In other words, the EWD and the MWEI BREF could work in practice, when Member States and local authorities are willing, but do not provide sound regulation in case operators and Member States are failing or acting too slow and/or acting insufficiently decisively and/or too broad permits. The time seems to have come to tighten the strings in the EU.

In our opinion, the exclusion of liability by permits and the exclusion of liability after closure of facilities should be reconsidered. Many situations could be too dependent on private ideas of local authorities or too dependent on the (shortcoming) knowledge or information at some moment in history.

We propose that operators will be kept accountable for hundred years after closure. Further on, we propose that articles will be formulated about suspension and withdrawal of permits.

Further on, prevention plans should be updated more frequently and more public participation and information should be provided. Not only in case of a new permit request, but also during the activities. Monitoring of possible environmental consequences, because of ended or ongoing activities (paid by the operator or Member State) should also be settled. Not only after heavy-accidents or after closure of the facility, but also during the activities.

The limited scope of the definition of *'environmental damage'* (from the Environment Liability Directive) should also be reconsidered here, being limited to significant damages to the interests of the Birds Directive, Habitat Directive, Water Framework Directive and soil pollution with risks for human health. Environment, nature and human health are broader than that. The interests of future generations could also be added.

While an update of the EWD and MWEI BREF is necessary anyway, a switch from Directive to Regulation might be preferred. Switching from an EWD to an Extractive Waste Regulation could reduce the complexity of the legislation, facilitate more coherent national implementation and international harmonization. A conversion could provide greater transparency, reduce expenses, ensure more uniform interpretations and increase efficiency.[8]

All in all, the formulation of more objective, harmonizing rules and the transformation from this Directive to a modern and effective Regulation would likely offer better guaranteed protection for the environment, nature, human health and the interests of future generations than the EWD does now.

Breda, 7 March 2024

Mr. R. Hörchner | Lawyer

[8] Filip Krepelka, *"Transformations of Directives into Regulations: Towards a More Uniform Administrative Law?"*, (2021), 27, European Public Law, Issue 4, pp. 781-806