

# MINING AND ENVIRONMENTAL LEGISLATION IN EUROPEAN UNION COUNTRIES

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## ABSTRACT

*There is a shortage in the E.U about mining legislation except the one related to coal mining, in which, since long ago, there are Directives in several fields such as production aids, end of activity, restructuring, etc. However, for the rest of metal and non metal mining and quarry products, there are just a few guidelines, something which is acceptable for a market economy.*

*On the other hand, the environmental legislation has a great amount of Directives to protect the environment and the natural resources, but in general, they don't regard the existence of mining activity or potential deposits and that makes mining activity more and more difficult. Although this activity with its advantages and disadvantages helps to create jobs and in general economics terms to the development of some European Union Countries.*

*In addition, those environmental Directives are regarded in some countries, like Spain, as a "minimum" and its State Administration may, and in fact do so, in many cases harden them since Spain has several regions with self-government, those with environmental legislative capacity can modify and harden the European Directives which have been already modified by the State Administration.*

*The analysis of this subject and the proposal for the protection of the mining industry as a natural resources needed for the continuous development of the market economy, on equal terms as other natural resources in relation to the environment, is the matter of this communication in order to achieve that in those countries of the European Union with mining resources will become possible to make profitable and environmental friendly mining in the XXI century.*

## MINING AND ENVIRONMENTAL LEGISLATION IN EU COUNTRIES

Mining activity in the countries of the European Union is not exactly going through one of its best times at present, neither as regards the energy sector in terms of the mining of its coal reserves, as a consequence of its high production costs due, in general, to the awkward accessibility of its deposits, which have given rise to a drop in activity and a rise in unemployment in all the producing countries; nor as regards the ore mining sector, given the strong production competition from other countries, in general those referred to as third world or underdeveloped countries, with lower pro-

duction costs. Only the non-ore mining and quarry products, such as industrial and ornamental rocks, maintain a certain development for strategic and competitive reasons.

Notwithstanding the aforementioned, it is worthwhile remembering that the EU, at present, produces 15 ore products in its deposits: aluminium, cadmium, zinc, cobalt, copper, chromium, tin, iron, manganese, mercury, nickel, gold, silver, lead and tungsten, some of which go to make up a large part of world production; for example, 54% of the mercury, 29% of the cadmium, 9% of the zinc, 8% of the lead and 6% of the tungsten produced in the world comes from Europe, according to data referring to recent years.

By the same token, from the point of view of the non metallic minerals in the EU, 21 products are extracted: andalusite, special clays, asbestos, sulphur, baryta, kaolin, celestite, diatomite, feldspar, fluorite, phosphates, glauberite, graphite, lithium, magnesite, mica, pumice, potash, common salt, chalk and peat, which, as is the case with the metals, some of these represent a sizeable part of world production figures, for example, 70% of the pumice, 42% of the feldspar, 31% of the diatomite, 30% of the glauberite, 24% of the special clays, 23% of the potash, 18% of the chalk, 13% of the peat and 10% of the sulphur, fluorite and andalusite world production.

As regards Spain, within the context of the EU, it produces 9 of the metals that are to be found in the Union, and some in large proportions of the Union total, for example gold (54%), silver (50%), zinc (40%), lead (30%), iron (10%) and copper (9%). Likewise, as far as non-metallic production is concerned, it produces all of those mentioned, but important proportions of the Union production in glauberite (100%), celestite (98%), magnesite (30%), special clays (30%), fluorite (20%), potash (12%) and common salt (9%).

Spain, on the other hand, also produces another series of mineral products proceeding from quarries, among which, worthy of mention are gypsum, representing 7% of total world production, and 11% of the world's natural stone, as well as being the world's leading roof slate and ornamental granite producer, while being the second largest world producer of marble.

Taking into account all of the aforesaid, the EU, as corresponds to market economy criteria, has not established any mining legislation, except in the case of coal CECA, the treaty of which was the initial seed of the present EU, and yet it does define its policies in other areas such as agriculture, livestock farming or the environment, the latter being the subject of a plethora of directives, the effects of which are directly related to the mining activity, which we will deal with below.

One of the very few EU documents on mining is the Council resolution of July 28<sup>th</sup> 1989 concerning the development of the Community mining industry, in which it **acknowledges** the fact that the mining industry is important and economically, socially and commercially significant, and that it **can contribute**, in a marked fashion, to the Community supplies, and as a consequence of being another sector, it must be integrated into the attainment project of the interior market, in the awareness of the positive effects that it can have for the whole industrial line, and that its development must be brought about **in normal competitive conditions**; the Council invites the Commission to proceed with the drawing-up of specific measures, priority being given to matters of research and development, the granting of structural funds and the elimination of administrative and fiscal obstacles, thus improving the socio-economic framework of the mining sector.

In real terms, however, this resolution of good intentions on behalf of the Council has contributed little to the mining sector of the EU, given that, as we have already pointed out above,

all the efforts have been devoted to a gradual reduction in the coal sector, which will still go on, with aids and grants to alleviate the closing of the coal mines, and the staff reductions.

Nevertheless, one must not forget that mining in the EU is still an important sector in terms of employment and GNP. Take the case of Spain, for example, where the mining sector at the present time has the same limitations, or perhaps even more, than the whole of the EU together, it is worthwhile considering the fact that it stands for 2% of the total paid employment in the State, considering the total employment generated (direct employment + indirect), and that the value of the mining production represents 1% of the total GNP of the entire State, and 2% of said GNP, if one takes into account the indirect effects.

The environmental consciousness of the societies in the developed world, motivated by the aggressions to the environment and natural surroundings perpetrated by the development at all costs mentality, a consequence of the market economy, has not stopped getting bigger both quantitatively and qualitatively. Meanwhile in the decade of the '70s there was an attempt at correction: "who pollutes pays"; in the '80s an attempt was made at prevention, developing Environmental Impact Assessment, Territorial Zoning and Environmental Policies; in the '90s, after the confirmation of the possible global impact of phenomena such as the ozone layer and the climatic changes, compatible with the Sustained Development, the door was opened onto increasingly more global processes, integrating the environmental with the economic and social.

All of this has given rise to a profusion of EU environmental legislation, as it has in the rest of the developed countries, by means of which the legislator, as any other human being, demonstrates a tendency towards minimal effort, and problem avoidance, given that nobody likes to rock the boat, above all in those matters which he/she considers to be problematical and where his/her attention is devoted, in most of the cases, to being able to demonstrate that the responsibility is not his or hers. As a result of this, the various Governments consider that the best way of not appearing administratively responsible is to have a homologated regulation, if possible for several countries, and with **formal evidence** that said regulation is being fulfilled. For his part the citizen, in general, also likes to feel safe and to have someone to put the blame on: Administration or company, when something goes wrong. All this, therefore, gives rise to the tendency to have **regulations for everything** and that, **at least formally**, said regulations are fulfilled.

This new idea of environmental, economic and social globalisation, with specific regulations and standards, is gradually gaining ground, but slowly. Nevertheless, the change is great and there are problems yet to be solved as regards its application, and certainly, one of these not insignificant problems, is the make it compatible with economic liberalisation which is everywhere manifest, and that a lot of the time comes accompanied by **the exporting of environmental degradation**

to countries of the so-called third world with no degree of reserve whatsoever and without demonstrating the least solidarity.

The problem with regard to mining, specifically as regards environmental aspects, resides in the fact that all the legislation applied has been conceived for industry in general, whereas mining is a minority industrial activity, above all in the most developed countries, which is where the environmental standards or regulations most likely originate, particularly in their most technical aspects. Basically, said legislation may be grouped into two blocks as far as mining is concerned: environmental impact and land restoration studies, and the dumping regulations, which have been conceived for industry.

Given that a mineral deposit is, in general terms, a geochemical anomaly, and that it normally has natural manifestations on the surface, that allow for the deposit's discovery, if the legislation is strictly applied, with some norms based on the setting of certain limits, it is quite likely that the mining areas would find themselves within the category of polluted area, even before any mining activity whatsoever were to take place.

All of the aforesaid, analysed from the mining perspective, leads one to believe that all the legal standards and regulations are drawn up by people far removed from industrial reality, people whom bureaucracy obliges to live in cities, and who like to, for the most part, visit the country on aesthetically pleasing trips, which would go to explain the demand, for example, for environmental impact studies for any work that involves opening up a hole in the countryside, be it for a mine, a quarry or a roadway, a demand which is inexistent when dealing with the construction of a building, simply because of the fact that to the legislator, as with the majority of people, it appears quite "normal", and the presence of buildings makes no impression on them, even though it be in the middle of a natural area. The same happens with water falls in public channels. A good idea would be to compare the presence of a hotel complex and a quarry in a natural park, and to assess the impacts produced.

There is no doubt that the mining industry must make an effort as regards committing itself to the natural environment and adapting its methods to environmental management demands, however, we are of the opinion that environmental legislation should also be more coherent in its aim of protecting the natural environment, and should avoid, specifically as regards the mining industry, falling into the temptation of defining unacceptable values for certain indices, independently of its source, as happens on many occasions.

One must also keep in mind that, in general, in the EU countries, the applicable environmental legislation comes from the transposition of European Directives to the laws of each individual country; these laws, for their part, have to include all that which is laid down by the Community, by they may add greater limitations, and in some cases they do so.

The Spanish case is even more unique, with respect to the other countries of the EU, given that said transposition to Spanish state legislation, may also be subject to further limita-

tions on the national regulations introduced by means of Regional Autonomy legislation, and this, frequently with a strong environmental bias.

Moreover, taking into account all that other mining legislation, as well as industrial, waste, safety and hygiene legislation etc., and the state, autonomous and municipal jurisdictions that co-habit in Spain, an enormous legislative web is woven, in which many times neither light is to be seen or exit found. The result of which is that mining businessmen and investors do not know what to keep to before the putting into operation of new projects or the continuance of those already in existence, exposing the patent inefficiency of the legislation, both in mining development as well as in the rectifying of anomalous situations, when the latter arise, given that the responsibilities are diluted as a result of all the Administrative bodies involved.

The new Community Directive dealing with Waste may turn out to be particularly preoccupying for the mining industry. Up until now the 10/1998 Waste Law, which as a transposition of the 91/156 Directive, has regulated by means of the 952/1997 Royal Decree all the waste, mining waste being excluded, for which said Law will only be applied in reference to those aspects that are not expressly regulated by its specific Law, namely the 1973 Mines' Law and the provisions laid down therein.

In the draft proposals of the new Directive, not only are environmental management considerations laid down, but also guidelines with strict waterproofing treatment requisites, which could be applied, if there is no clear distinguishing legislation, for surface mining waste deposits (pools with films of water or filtrates), laying down impracticable guideline parameters, as a result of the size factor of mining waste in comparison to much smaller classical waste volumes. On the other hand, there is also the risk of confusion of what administrative body will be responsible: Mining or Environment.

Given the procedure of transposing the once adopted Community Directive into the state legislation of each country, we believe it to be essential that said Directive take into account the specific conditions of the mining industry. Thus it is necessary to keep in mind the fact that mining waste, in the case of the big ore mines, is normally of large volumes, between 20 and 100 Mt. per year. Moreover, the possibility of being treated once again must be also kept in mind. If the conditions permit the lower base treatment or recovery of a different metal for which the initial mining process had been established, the directive must not be homologated nor compare with classical waste from other activities.

In addition to all these administrative difficulties - which as has already been pointed out, are different even among the EU member states themselves, and more pronounced in some of these, such as Spain - the strong price competition, fundamentally as regards metal, which exists with third world countries must also be considered, and that without the shadow of a doubt, for the producers in the developed countries, a clear dumping base is established for their part.

It is a double-edged dumping: the socio-labour and the environmental.

A large part of the metal producers from the so-called third world countries do not fulfil, even remotely, minimal wages, safety, hygiene and social welfare etc. with respect to the workers employed, workers who are exploited with low salaries, long working days and scarcely any social rights, and all this without getting into the subject of the age at which these workers start out on their professional activities. All this clearly has repercussions on production costs and consequently on sales price competitiveness which is not comparable to those of the developed countries.

It is rather interesting, to say the least, to see that recently more than fifty Non-governmental Organisations cried out for the creation of an identity label for those textile and sports products that have been made without exploiting third world workers. This campaign named Clean Clothes, which is financed by the EU, has been supported by the European Parliament and is being carried out in 10 EU countries. Are not the working conditions of mining workers in those countries equally denigrating? Why can a similar situation not be established in the case of metals that come from third world countries?

On the other hand, environmental dumping is also notorious, in the referred to third world producing countries there is little or no respect shown towards the environment. Neither Environmental Impact Studies, nor Restoration Studies are required, therefore they are not carried out. The waste dumping has neither theoretical nor practical limitations, and all this, as we miners well know, represents important added costs. Technology, mining and treatment equipment etc., is exported to said countries, but not environmental technology so that they do not damage **their** (our?) natural surroundings. Is this the idea that the developed countries have of the famous "**global village**"? Is this the idea that the developed countries have of **Solidarity**?

It seems that, in spite of the grandiose declarations that came out of the Earth Summit in Rio in 1992 and the Kyoto Climate Summit, their application have serious problems and their bringing into compatibility with the economic liberalisation is not, by a long shot, one of the lesser of these, and we in the developed countries are to a great extent to blame for **exporting environmental degradation**, without taking into account the consequences for **our global village**, and most of the time our **solidarity** is nothing more than mere gestures.

The miners of the developed countries, and Spanish miners in particular, believe that with the present technology and the appropriate environmental sensitivity, the continuity of mining in our countries is possible, following an optimum size adaptation process in function of our deposits and changing where necessary to products in demand in a market free economy, and with total respect to our surroundings and the rest of the natural resources.

To achieve this it is necessary that Governments, those of the Community and member countries, consider the socio-economic importance of mining itself, and differentiate said industrial activity from others, given its specific characteristics, not creating more difficulties for it than it already has to deal with, given the high business risk that is inherent in mining itself.

We believe that an effective step in this direction, would be to gather together in the conclusions of this International Conference of the International Mine Water Association, a formal partition to the EU not that it legislate in favour of the mining activity, but that when it does so in other spheres that among the natural resources are mining products and that they should protect mining so that it may be done in the EU, with total respect for the natural resources if its surroundings, which is completely compatible with present technology and thus fulfil the recommendations of the European Council resolution of 28th July, 1989.