

Opportunities in EU legislation to address obsolete pesticides

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Limitations of the current EU legal framework to address past environmental damage (PED)

- Much of EU environmental law focuses on harmonising standards to permit free circulation of goods
- Lack of a coherent framework for addressing historic pollution problems, such as land contamination
- Considered a matter of local rather than EU-level concern &, under subsidiarity, left to individual Member States to solve
- View changing due to developments in international law & recognition of potential international effects (Baia Mare)

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Relevant EU legislation today

- Specific legislation implementing international conventions
- Chemicals – controls on classification, production & use
- Water protection rules
- Waste management rules
- Environmental governance rules

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The International Conventions

- 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes & their Disposal
- 2001 Stockholm Convention on Persistent Organic Pollutants
- 1998 Aarhus Protocol to CLRTAP on Persistent Organic Pollutants
- 1998 Rotterdam Convention on PIC
- 1998 Aarhus Convention on Access to Information, Public Participation & Access to Justice in Environmental Matters

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Stockholm Convention (POPs)

- requires Parties to take legal & administrative measures to eliminate or heavily restrict production & use of aldrin, chlordane, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, toxaphene, PCB, & DDT

Aarhus Protocol on POPs)

- requires Parties to control, reduce & eliminate discharges, emissions & losses of POPs
- Also covers HCH, chlordecone and HBB

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Stockholm Convention (POPs)

Regulation (EC) No 850/2004 on persistent organic pollutants and amending Directive 79/117/EEC

Art. 5 on Stockpiles:

1. The holder of a stockpile which consists of substances listed in Annex I or Annex II ... shall manage that stockpile as waste.
2. The holder of a stockpile > 50 kg...shall provide the CA with information concerning the nature and size of that stockpile.

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Chemicals – controls on classification, production & use

- Directive 79/117 setting restrictions & bans on a number of pesticides
- Directive 76/769 setting restrictions on marketing & use (bans & other controls over POPs)
- Directive 91/414 on plant protection products
- Directive 98/8 on biocides

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Water protection rules

- Directive 76/464 on dangerous substances released to the aquatic environment
- Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water Framework Directive)

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Water Framework Directive

Member States are to carry out programmes of measures with the aim of achieving, by 2015:

- a) For surface waters -- "good chemical & ecological status"
- b) For groundwater -- "good chemical & quantitative status"
- c) For protected areas -- "compliance with EU standards & objectives"

For groundwater:

"Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater..."

"Member States are to protect, enhance & restore ..."

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Water Framework Directive

Implementation Timetable for Member States

- By end 2004, completed analysis of characteristics of each river basin district & review of impact of human activity
- By end 2006, operational water monitoring programmes
- By 2009, Management Plans for each river basin district, with Programme of Measures that meet Article 4 objectives:
 - i. Prevent deterioration of surface water, *achieve good chemical & ecological status*, & reduce pollution from hazardous substances
 - ii. Protect groundwater, prevent pollution & deterioration, ...
- By 2015, achievement of objectives in management plans

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Water Framework Directive (8)

River Basin Management Plans (RBMP)

- **Basic measures** - continued:
 - Measures to prevent pollution by priority substances
 - All appropriate measures to reduce the risk to aquatic ecosystems

Art. 11(6): Member States are to take all appropriate steps not to increase pollution of marine waters

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Decision 2455/2001/EC on Priority Substances

- List of substances considered to present a significant risk to or via the aquatic environment
- Linked to obligation in Water Framework Directive to take Community-level measures aimed at the progressive reduction and – for **priority hazardous substances** – at the cessation or phasing out of discharges, emissions, & losses by 2020

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Waste Management Requirements

Waste Framework Directive (75/443, as amended)

Hazardous Waste Directive (91/6890)

Landfill Directive (1999/31)

Incineration Directive (2000/76)

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Waste Framework Directive (75/442, as amended)

Article 4: Member States must take the necessary measures

- to ensure waste is recovered or disposed of without endangering human health & without using processes or methods which could harm the environment
- to prohibit the abandonment, dumping or uncontrolled disposal of waste

Article 6: MS must designate the competent authority responsible for implementing the WFD

Article 7: CA must draw up & implement **Waste Management Plans**

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Hazardous Waste Framework Directive (91/689/EEC)

- Sets additional, more stringent rules to deal with special nature of HW
- Covers waste listed in European List of Wastes marked *, & any other waste with a hazardous property, e.g., toxic
 - 02 01 08* agrochemical waste containing dangerous substances
 - 15 01 10* packaging containing residues of dangerous substances
 - 16 03 off-specification batches & unused products
 - 17 05 soil from contaminated sites

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Landfill Directive (1999/3310)

- Introduces stringent technical requirements aimed at preventing or reducing negative effects from landfilling
- By 2004, no more co-disposal of hazardous & non-hazardous waste
- By 2009, existing landfills must have been upgraded (“conditioning plan”) or must cease to operate

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Waste Incineration Directive (2000/76)

- Introduces specific requirements to prevent or reduce air, water & soil pollution caused by waste incineration or co-incineration
- Operators must meet stringent operating conditions – i.e temperatures for the burning of various wastes & emission limit values for exhaust gases, for co-incineration exhaust gases & for discharges to water
- Minimisation of amount & harmfulness of waste residues, including transport in closed containers & recycling wherever possible

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Environmental Governance Rules

- 1998 Aarhus Convention (3 pillars)
- Access to Environmental Information Directive
- Access to Justice Directive (pending)
- Environmental Liability Directive

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Access to Environmental Information Directive (2003/4)

- Guarantees the right of access by the public to environmental information held by the public authorities
- "Environmental information" = information in any form on:
 - the state of the environment
 - on factors, measures or activities affecting or likely to affect the environment or designed to protect it
 - the state of human health
- "Public Authorities"
 - government or other public administration
 - natural or legal person performing public administrative functions under national law
 - any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment

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Key Requirements for Public Authorities

- Make requested environmental information available, subject to certain exceptions
 - exceptions interpreted in a restrictive manner
 - fewer exceptions permitted for restricting access to info on emissions
- Make practical arrangements, such as public registers or lists, of environmental info held
- Access to review procedure to contest refusals or responses
- Actively and systematically disseminate environmental info to public

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Environmental Liability Directive (2004/35)

- Establishes a framework for preventing & remedying environmental damage
- **Strict liability** for environmental damage caused by operation of an Annex III occupational activity such as landfill sites & incineration plants
- **Fault-based liability** for damage to protected species & natural habitats (operator negligence)

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Environmental Liability (2)

- **Environmental damage** defined as:
 - Water damage (adverse effects on ecological, chemical and/or quantitative status or ecological status of waters as defined in Water Framework Directive)
 - Land damage (land contamination that creates serious risk to human health)
 - Damage to protected species & natural habitats which has significant adverse effects on conservation status
- **Operator** defined as person who operates or controls the occupational activity or holding decisive economic power over the technical functioning of activity

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Environmental Liability (3)

- Competent authority plays crucial role & must establish whether operator has caused damage
- Where imminent threat of environmental damage, CA can require operator to take necessary **preventive** measures
- Where environmental damage occurs, CA may require operator to take necessary **remedial** measures (Annex II) or take such measures directly
- **Costs** of taking **preventive or remediation action** are to be recovered from the **operator**
- **Costs** of restoring **orphan damage** (where operator cannot be identified, or has insufficient financial means) to be borne **by MS**

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Environmental Liability (4)

Article 12: Natural or legal persons

- Affected or likely to be affected by environmental damage or
 - Having sufficient interest in environmental decision making relating to the damage or, alternatively,
 - Alleging the impairment of a right (where MS administrative procedural law requires a showing of this)
- are entitled to submit observations to the CA and to request the CA to take action under this Directive.
- Any NGO promoting environmental protection & meeting requirements under national law is deemed to have sufficient interest.

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Environmental Liability (5)

- Request for action has to show in a plausible manner that environmental damage exists.
- CA obliged to respond to the person who requested action & to provide reasons for acceding to or refusing the request.

Article 13: Access to a court to review the procedural & substantive legality of the CA's decision, act or failure to act

- Deadline for transposition: 30 April 2007

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Possibilities for EU financing

- Structural Funds (requires close cooperation with regional authorities)
- LIFE

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