



The Association of Geological Surveys of the European Union

(EuroGeoSurveys)

in their position as

custodians to their national natural resources

and

guardians of their terrestrial environment

present their contribution

to the Debate on the Environment Directorate General

Working Paper on:

"Prevention and restoration of Significant Environmental Damage"

(Environmental Liability)

The role of Geologists and Environmental Liability

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Introduction

This paper sets out the opinion of EuroGeoSurveys (The Association of the Geological Surveys of the European Union) to the Environment Directorate General Working Paper on Prevention and Restoration of Significant Environmental Damage (Environmental Liability).

About EuroGeoSurveys

EuroGeoSurveys: decision support for environmental and natural resource policy in Europe

EuroGeoSurveys is a European non-profit association, which works solely in the public interest. It is constituted by the Directors of the national Geological Survey organisations (GSOs) of all fifteen-member states of the European Union plus Iceland, Norway and Switzerland, and can draw on the expertise of over 6000 professionals. Its main aim is to provide the entire range of European Union institutions with expert, balanced and practical pan-European advice and information as an aid to problem-solving and policy formulation in areas such as the use of natural resources (minerals, water, energy, soils and land), and the sustainable management of environmental issues and natural hazards

- Bring together the Surveys, enabling them to jointly address European issues of common interest;
- Provide a permanent network between the Surveys and a gateway to each one and its national networks;
- Assist the EU institutions to obtain joint technical advice from the Geological Surveys;
- Promote appropriate contributions of geosciences to EU affairs and action programmes;
- Initiate, develop, and promote geosciences inputs to bilateral and multilateral programmes with European and other countries.

Each member Survey reports to government on the state of the country's landmass and Earth resources and maintains large geosciences information banks. EuroGeoSurveys is thus a network of national topic centres, each of which provides government and industry with comprehensive, objective baseline information to support decision-making on natural resource (minerals, energy, water, soils) and environmental issues, such as the holistic monitoring and preservation of the environment. EuroGeoSurveys promotes Survey work to the EU institutions as relevant to European problem solving in these issues and has contributed opinions on minerals research, groundwater resource policy, the urban environment and the content of new RTD Framework Programmes.

EuroGeoSurveys formulates forward strategy in eleven main policy sectors (networks) which reflect priorities on the EU agenda: information and knowledge transfer; sustainable land use planning; CO₂ disposal; natural resource demands; natural geohazards (including earthquakes); clean water, urbanisation, pollution and

waste management; quality of the coastal and marine environment; land instability; impacts of climate change; and effective international cooperation in the Developing World, PHARE and TACIS programmes.

EuroGeoSurveys is part of the Forum of Directors of European Geological Surveys (FOREGS), a platform for discussion of European resource and environmental issues by the Council of Europe countries.

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Scope of this response

The focus of EuroGeoSurveys is on technical and research issues. As a network of national, geoscientific government organisations, EuroGeoSurveys is perfectly positioned to react on particular technical and scientific points relating to contaminated sites, their management and remediation, including data gathering and management.

EuroGeoSurveys does not feel fit to make overall statements on the issues and principles discussed in this Working Document, or in the White Paper.

EuroGeoSurveys Opinion

3. SED Means:

- ***“Damage that adversely affects the favourable conservation status of biodiversity”***

The definition is rather strict, as cases where the damage is an indirect result of the activity are not covered by this definition. Indeed, EuroGeoSurveys considers erosion, landslides and mudflows as a result of human activities as Serious Environmental Damage.

If the definition of SED is extended to cover such indirect effects of infrastructural, industrial and development projects, geologists need to be involved upfront in order to define in an early stage what the risks and the liabilities are in case of damage to the environment and society.

- ***“Damage that creates serious harm to human health as a result of either of the foregoing categories or land (soil and subsoil) contamination.”***

Damage that creates serious harm to health is a statement that evolves with time. E.g. some chemical agents that can be considered harmful to human health as such have been found to be totally inert when residing in the subsoil. Hence, although the contamination of the subsoil may increase, sometimes no extra harm is done to human health.

However, additional effects may cause damage to human health in the case where, due to absorption of agents to the subsoil matrix, or due to complexation or catalytic events, other chemicals, initially present in the subsoil, may be mobilised, released, and concentrated in a way such that in the end, damage to human health can be expected.

In other words, an industrial operation emitting chemical X may result in pollution by chemical Y.

4. “Liability would not be retrospective”.

The retrospective aspect can be based in terms of liability on a sound evaluation of the initial level of pollution of subsurface. The initial level being the level measured at the moment the directives comes into action, be it a new or an already existing industrial operation.

11. “Criteria for carrying out restoration would be set out in an Annex to the Directive...”.

Criteria for carrying out restoration are depending on the local situation in the case of subsurface pollution. Indeed, due to the subsurface diversity, EU wide, or even nation wide quantification and strict regulation may create an extra burden, rather than resolving a problem. It is therefore justifiable to rely for criteria and monitoring, on a recognised and competent, independent authority, appointed by the Member States. Such situation would be comparable with the actual situation on quality assessment (E.g. ISO certification) where a limited number of companies monitor the quality systems of all operators on a given market.

This observation is very much in line with earlier comment on the White Paper stating that: Variability in geographical and hence geological factors implies that any attempt to develop generic models of risk in sufficient detail, to derive numeric values across Europe as a whole, would be scientifically indefensible; the inherent cultural, geological and climatic variations across a territory of this size are too great.

17. A “Qualified Entity” would mean any body or organisation, which, according to the criteria, if any, laid down in national law,.....”

The above definition leaves a lot of room for interpretation by the national governments and the political lobby surrounding those national governments. This will lead to regional differences in the sense that in one Member State, only governmental bodies will be accepted while in other countries NGO’s, or even smaller local or regional environmentalist bodies may be accepted. This will lead to a strong diversification in “police” monitoring of the environment.

Conclusion

EuroGeoSurveys does not seek to make any comment concerning the overall content of this Working Document on Environmental Liability. But it does provide a firm technical and scientific advise.

From this point of view, there is a clear scientific argumentation stating that:

1. Common numerical quantification rather than harmonising the remediation of pollutions will result in a disparate application of any common principles of protection of human health and the environment.
2. There is a clear need to define the initial level of pollution the moment the directive becomes effective.
3. Competent authorities, designated by the Member states will have to be trained and installed to monitor assessment and restoration.
“For the sake of quality EU wide guidelines will have to be issued specifying training, infrastructure basic tasks etc...” for these competent Authorities.