



**ESPO comments on the proposal for a Directive on Waste - (2005/0281(COD))**

*April 2007*

**1. Introduction**

The European Sea Ports Organisation (ESPO) calls on the Council to support the proposal of the Presidency regarding the exclusion of non-hazardous natural sediments from the scope of the Waste Framework Directive with the following addition:

Article 2(3):

*Sediments relocated inside of surface waters or into near-shore areas laid out for this specific relocation for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts shall be excluded from the scope of this Directive if it is proven that the sediments are non-hazardous and [...] without prejudice to compliance with existing obligations under other relevant Community legislation.*

This amendment is of huge importance for all European seaports as it relates to the vital activity of dredging in port areas, waterways and navigation channels.

Dredging is required to keep European ports safely accessible for vessels and to safeguard trading from and to the ports of the EU. The amendment above, as already discussed in previous Council working groups, would (finally) recognize that a natural material such as sediment does not automatically constitute waste.

**2. Why non-hazardous dredged material is not waste**

European seaports believe that the current definition of waste in the Waste Framework Directive creates a completely wrong image of sediment which is a natural resource material. Instead of regarding this as waste, it should be valued as an essential element in maintaining the quality of water bodies. Sediment should preferably stay in its natural environment where it can play its role as regards the ecological and hydromorphological status of the water body.

This legal misconception has caused numerous problems with obtaining permits and it has led to high costs that could have been avoided. Moreover, EU figures indicating the total amount of waste do not include the volume of dredged material which is dredged every year. This amount is roughly estimated at 200 million cubic meters.

### 3. Relocation within the water

Dredging consists of moving sediments from one place in a water body to another where it does not hinder shipping. Such removal of sizable volumes of sediment and silt by dredging and the relocation elsewhere in the water body is a form of sustainable management as it contributes to maintaining the sediment balance and preventing erosion.

Sediment management (thus also dredging) is already regulated under the LONDON Convention and the corresponding regional Conventions (OSPAR, HELCOM, BARCELONA and BUCHAREST). The so-called Dredged Material Assessment Framework developed under the London Convention is the basis for decision making and a framework for sediment management. Contrary to the EU Waste Directive these conventions explicitly recognize the important role of sediment and dredged material and authorize their relocation at sea. Moreover, the jurisdictional weight of these conventions exceeds - for the countries that have ratified them - EU law. Therefore there is a potential conflict between the conventions and the interpretation of current Community law on waste vis-à-vis dredged material.

For this reason relocation of dredged material within the water needs to be regulated conform the relevant international conventions and should be exempted by the Waste Directive.

### 4. Relocation near-shore

Sediments are not only being relocated in the water body itself but are often deposited in specially designed facilities for that. For that reason the amendment should make reference to into near-shore areas laid out for this specific relocation. Such a reference would be in line with the current practice in many countries and is therefore recommended by the sector.

A similar exemption is also included in the Landfill Directive (see below). The Landfill Directive moreover uses the terminology 'non-hazardous' which should for reasons of continuity also serve as basis for an exemption in the Waste Framework Directive. Moreover, as hazardous characteristics are legally defined under Annex III of the Waste Framework Directive this would not lead to any legal uncertainty.

Article 3(2) of the Landfill Directive:

2. Without prejudice to existing Community legislation, the following shall be **excluded** from the scope of this Directive:

[...]

*- the deposit of non-hazardous dredging sludges **alongside** small waterways from where they have been dredged out and of **non-hazardous** sludges in surface water including the bed and its sub soil,*

### 5. Sufficient legal coverage

Hazardous dredged material can easily be distinguished from non-contaminated dredged material as quality assessments are being carried out before every dredging operation. Only hazardous dredged

material and silt should be considered as waste under the Waste Framework Directive as for this small part of the total amount of dredged material the waste hierarchy should apply (with disposal in the sense of landfilling as last option).

Excluding non-hazardous sediments from the scope of the Waste Directive would not lead to a lack of legal coverage. There are already ample controls over the deposit of dredgings either on land or at sea (for that reason it is also quite unnecessary to bring them within the scope of the Water Framework Directive). Therefore the application of the Waste Directive just leads to an unnecessary bad perception of a natural product without a clear environmental reason.

## **6. Conclusion**

For the reasons outlined above, ESPO calls on the Council to support the amendment which was proposed by the Presidency with an additional reference to near-shore facilities. Only for hazardous sediments the definition of waste, and the treatment according to the waste hierarchy, makes sense. Non-hazardous sediments are a natural product and should be treated accordingly.

*Since 1993, ESPO represents the port authorities, port associations and port administrations of the seaports of the European Union. The mission of the organisation is to influence public policy in the EU to achieve a safe, efficient and environmentally sustainable European port sector operating as a key element of a transport industry where free and undistorted market conditions prevail as far as practical.*

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