

A Frack-tivist's INTRODUCTION to EU Legislation



Presented by:

The Greens | European Free Alliance

in the European Parliament

www.greens-efa.eu



There is currently no overall EU framework for the extraction of unconventional fossil fuels (UFF), such as shale gas, shale oil and coal bed methane. And yet the industry argues that they are already one of the most regulated industries around...

The Greens/EFA Group are concerned about many aspects of UFF extraction - including the strain on water supplies, the impact on the environment and landscape, the contamination of drinking water, the chemicals both pumped into the rock and dislodged from the rocks, the effects on human health, the noise, the seismic of both the drilling and the several trucks needed at the sites.

EU legislation should, and in some cases already does, address these concerns.

This "fracktivists" introduction to EU legislation will cover:

- How EU legislation works
- What existing legislation there is
- How it applies to shale gas
- Where the gaps are in EU legislation
- Why we need an overall EU framework

PART I: EU LEGISLATION

Directives = a piece of EU legislation which must be transposed into Member State legislation at national level (can be more general, open to interpretation)

Regulations = directly applicable in all Member States (trumping Member State legislation on similar issues, more specific provisions)

EU Commission: civil service who draft legislation, through a process of impact assessments, public consultations, stakeholder meetings

EU Council: made up of representatives from the Member States (at highest level Heads of States, at lower levels civil servants from national governments); they scrutinise and amend legislation (in working groups) according to national interests

EU Parliament: made up of directly elected members from a broad spectrum of political parties; in parallel to the EU Council they scrutinise and amend legislation (in committees and in their political groups)



PART II: WHAT, HOW, WHERE

There are four Directives mainly covering certain aspects of mining, however there is no comprehensive EU mining framework - it is the responsibility of the Members States.

1 Waste

Directive 2006/21/EC on the management of waste from extractive industries (Mining Waste Directive)

DETAILS: applies to waste resulting from the extraction, treatment and storage of mineral resources and the working of quarries - broad scope on extractive waste

UFF APPLICABLE? applies to the safe handling of the waste water which contains hazardous chemicals (including carcinogens, and radioactive elements) - relates to the waste facility and not the well construction (for UFF activities) - also includes that permits are based on Best Available Technologies, however at present there are no such BATs for fracking fluids.

2 & 3 Worker safety I

Directive 1992/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral extracting industries

Worker safety II

Directive 1992/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling

DETAILS: both involve protecting the health and safety of workers

UFF APPLICABLE? as with all lifting of heavy machinery, workers safety must be protected

4 Licensing

Directive 1994/22/EC concerning the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

DETAILS: concerns the sovereignty of Members States in granting licences for hydrocarbon extraction



UFF APPLICABLE? financial guarantee for damages to be submitted prior to the granting of exploitation permits; however does not specifically cover well construction and drilling for UFFs; only general requirements, environmental protection objectives not mandatory

OTHER IMPORTANT EU LEGISLATION

5 & 6 Chemicals

Regulation 1907/2006: REACH: Registration, Evaluation, Authorisation and Restriction of Chemicals, establishing a European Chemicals Agency

DETAILS: requires companies to ensure that chemicals used are registered for their intended use.

UFF APPLICABLE? the above applies to fracking companies, however the regulation does not oblige companies to disclose the substances used for fracking; also does not prevent water contamination

Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (Seveso II Directive)

DETAILS: This is amended by 2003/105/EC to extend the scope to cover risks arising from storage and processing activities in mining, from pyrotechnic and explosive substances

UFF APPLICABLE? it is under review and should include declaration of substances that might be involved in accidents

7 & 8 Water

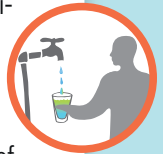
Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water framework directive)

Directive 2006/118/EC on the protection of groundwater against pollution and deterioration



DETAILS: calls for preventing and reducing pollution, promoting sustainable water usage, environmental protection

UFF APPLICABLE? 3 main water concerns with regards to fracking: 1 - huge quantities of fresh water used in process - 2 - accidents and leaks to wells causing contamination of groundwater supplies - 3 - chemicals remaining underground and seeping into aquifers



- While these Directives do not give specific measures for UFF operations, Member States are obliged to protect all bodies of groundwater; however an interpretation of Article 11.3.j could allow Member States to inject waste fracking fluids back into the earth - the Commission has said though that this should not apply to UFF activities

9 Environment

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA)

DETAILS: in Annex I projects must be subject to an environmental impact assessment; in Annex II Member States must examine projects on a case-by-case basis.

UFF APPLICABLE? NOT YET! Currently the EIA Directive is being revised to include a number of new realities. The European Parliament's environment committee has voted for mandatory environmental impact assessments for UFF projects, which is great news! There are still more negotiations to happen (with the Council) before this is law. Keep pressure on MEPs and national governments to make sure that UFF projects are covered by the EIA Directive!

10 Environmental Liability Directive

Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage

UFF APPLICABLE? currently poorly implemented by Member States; does not oblige operators to take out adequate insurance considering the high costs associated with accidents in the extractive industries;



OTHER LEGISLATION

- Aarhus convention
- Ambient Air Quality
- Ambient Air Strategy
- BAT notes (BREFs)
- ETS
- Habitats & Birds Directive
- Industrial Emissions Directive
- Natura 2000
- Noise Directive

PART III: CONCLUSIONS

The EU legally doesn't have the competence, and therefore cannot impose a ban on UFF extraction if the legislation is considered part of energy policy, because it clashes with Article 194 of the Treaty of the Functioning of the European Union.

It could propose a moratorium according to the precautionary principle based on the EU's environmental remit.

Bans will only occur at local, regional and national levels through citizen mobilisation.

At EU institution level the most constructive approach is to fill in the several gaps in the existing legislation, through a broad EU framework on unconventional fossil fuel extraction in order to have, as a minimum, the highest environmental standards to limit adverse consequences as much as possible.





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