

**LEGISLATION AND PERMIT POLICIES
REGULATING THE USE OF HORTICULTURAL
AND ENERGY PEAT RESOURCES AND PEAT-
BASED PRODUCTS IN THE EU**

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Introduction to EPAGMA

This study was commissioned by EPAGMA in order to get an overview of the European legislation relevant for the peat industry

EPAGMA, the European Peat and Growing Media Association, is an association that was established on 1st May 2004 to represent the peat and growing media industry at a European level. The overarching objective/vision for EPAGMA is to ensure that peat becomes a highly accepted means for growing media and energy within the EU.

EPAGMA currently has 16 member companies in 11 EU Member States – in Belgium, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, Netherlands, Poland and Sweden. In volume terms EPAGMA members account for an estimated 65-70% of all peat harvesting within the EU.

EPAGMA is committed to high environmental practices in peat extraction, to the sustainable use of peat as a local energy source and to promoting the unique properties of peat as a substrate in horticultural plant production.

Introduction to the Study

As an aid to public representatives and officials, EPAGMA has already published two industry studies. The first of these is a report on the energy-peat industry within the EU followed by a report on the socio-economic impact of the peat and growing media industry on horticulture in the EU. It was decided to supplement these mainstream reports that deal with the essential nature of the peat industry's activities, namely peat for energy and peat as a growing medium, with a summary report on the regulatory regime within which the European peat industry operates.

This summary legal study provides an overview of the key legislation, both national as well as EU-based, that is particularly relevant to the peat industry. It does not cover all member states, but reflects the general legal and regulatory framework surrounding the industry and indicates that by and large the peat industry within the EU is well-regulated.

Summary

Many environmental Directives have been enacted by the EU, which have had an effect on peat production, the most significant of which are Directive 85/337/EEC of 27th June 1985, on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC of 3rd March 1997 (the EIA Directives), Directive 79/409/EEC of 2nd April 1979 (the Birds Directive), Directive 92/43/EC of 21st May 1992 on the conservation of natural and semi-natural habitats and of wild flora and

fauna (the Habitats Directive) and Directive 96/61/EC of 24th September 1996 on integrated pollution control (IPPC).

Under the EIA Directives an environmental impact assessment is mandatory for peat production where the surface area of the site exceeds 150 hectares. For areas less than this, member states have a discretion as to whether or not to require an assessment, which they determine by the setting of thresholds or criteria. The EIA process involves the public and relevant environmental authorities and is a comprehensive assessment of the potentially harmful environmental effects of a project. The trend across Europe seems to be to require an EIA for ever smaller areas for peat extraction and indeed in Estonia it is proposed to require an assessment for all mechanical mining of peat. As a result of this, at the outset of most peat extraction projects, it is likely that the environmental effects will have been considered prior to consent being given, together with solutions for restoration etc. once extraction has terminated. From a producer perspective, this process entails significant expenditure of resources - financial, time and otherwise and it also substantially increases the time taken to obtain a peat extraction permit.

As a result of the Birds and Habitats Directives many peatlands across the EU have been designated as Special Protection Areas (SPAs) or Special Areas of Conservation (SACs) and incorporated into the Natura 2000 network, a Europe wide network of protected sites. Development including peat extraction in such areas is severely constrained and only allowed in exceptional circumstances. When seeking permission to extract peat in such an area, an EIA is likely to be required to assess the impacts on the bird or flora/fauna species in situ. Therefore, any peat extraction project which proceeds has been subject to a comprehensive assessment and will most certainly be subject to conditions regarding the preservation of the relevant bird or flora/fauna species. In many peatlands producers have been entirely precluded from exploiting their lands as a result of designation under these EU conservation Directives.

The IPPC Directive introduced a licensing system for polluting emissions involving air, including odours, water, land and noise emissions. Operators are expected to minimise the environmental effects of their facilities and to prevent environmental damage or accidents. If a licence is required for a particular peat extraction project, then the producer must comply strictly with all of the terms therein and is subject to penalties for failure to do so. The licence ensures that producers keep emissions within specified limits, thereby minimising the effects such peat extraction projects have on the environment. The licence obligations can be onerous in terms of what is required of a producer and can lead to inconvenience in complying therewith.

There are of course numerous other pieces of EU legislation and national legislation which also affect the extraction of peat, most particularly in the area of pollution. Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life sets a limit of 25 mg/litre for suspended solids in relevant waterways. The Water Framework Directive, which aims to prevent changes relating to waterflow and negative changes in the biological composition and functioning of aquatic ecosystems, has potential effects on the peat industry. As part of the implementation of

this Directive in Finland, peat producers are being put under increasing pressure to reduce emissions to waterways, which will involve significant expenditure. Special water authorities have been set up in Sweden who are working towards developing more stringent criteria for the protection of water bodies.

Outside of environmental legislation, there is also legislation which regulates the use of horticultural and energy peat. In relation to horticultural peat, most of the legislation in this area is at a national level and there are significant variations across member states as to the contents of horticultural peat products and labeling requirements. Producers exporting to other member states must ensure compliance with the national law of that member state, which can be markedly different to the legislation of their home country. In relation to energy peat, again most of the legislation here is at a national level. Very few EU member states actually produce peat for energy use and those that do have their own legislative frameworks in place to regulate this area.

This study considers documentation from the following countries:

Denmark
Estonia
Finland
Germany
Ireland
Latvia
Lithuania
Sweden
United Kingdom

A. Legal aspects of EU legislation on peat extraction for horticulture, energy and other uses

A number of EU Directives have been implemented which have had a significant effect on how member states regulate the extraction of peat. These Directives have introduced a number of mandatory obligations both in the application process for a peat extraction permit and during the extraction process itself. As a result of this legislation, the European peat industry now operates within a highly regulated framework, which has placed heavy burdens on peat producers in terms of the time and expense required to comply with the requirements of EU law.

A.1. Environmental Impact Assessment

Directive 85/337/EEC of 27th June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC of 3rd March 1997, requires member states to establish a procedure by which the environmental impact

of certain projects, likely to have significant effects on the environment, is assessed prior to consent being given. It is an interactive process, which involves the public and authorities with environmental responsibilities amongst others.

Under the Directives a compulsory Environmental Impact Assessment (EIA) is required for peat extraction in all cases where the surface area of the site exceeds 150 hectares. For other peat extraction projects member states have a limited discretion as to whether or not to require an EIA, by conducting either a case by case examination of the project and/or setting or applying thresholds or criteria.

a) Estonia

These Directives were implemented into Estonian law by the Environmental Impact Assessment and Environmental Management System Act (EIAEMSA), which came into force on 3rd April 2005. New legislation amending the EIAEMSA has been drafted, requiring an EIA for mechanical mining of peat in all circumstances but this has yet to be adopted.

In implementing the Directives the Estonian authorities have failed to sufficiently comprehend the need to involve the public, which in practice has been relegated to the background. As a rule only larger local governments have drawn attention to the need to involve the public. Increasingly the EIAEMSA is being implemented, but there has been no clear practice in construing and applying the law.

b) Finland

Directives 85/337/EEC and 97/11/EC have been fully implemented in Finland. Under the legislation, all peat extraction in an area larger than 10 hectares requires an environmental licence, which is valid for ten years. After the expiry of this time, the producer must apply for a new licence. If the planned peat production site is larger than 150 hectares or if the area has special environmental values, the peat producer must conduct an EIA before applying for an environmental licence.

The EIA is an expensive procedure, which takes 1-2 years, after which the environmental licensing process takes place, which can take 2-3 years. In practice local authorities are requiring an EIA for smaller and smaller areas, less than the 150 hectare threshold.

c) Germany

Directive 85/337/EEC was implemented in 1990 by the Act on Implementing Council

Directive of 27th June 1985. The German Environmental Impact Assessment Act (UVPG) was included in this Act and is directly applicable to the federal states, unless

they have imposed more specific regulations or federal state specifications are at odds with the UVPG. Under the legislation, EIA is a dependent part of the official approval procedure and is integrated into whichever specialist legislation is applicable. There is no independent procedure to assess the environmental impact of a proposal and no public authority exists specifically for this purpose. Under German law an EIA is required for peat extraction covering an area greater than 10 hectares.

Prior to implementation of the Directives, Germany already had certain regulations relating to projects and facilities, although these were not aimed at a comprehensive evaluation of a project or facility's environmental impact, but dealt with individual aspects, such as emissions, building regulations and land-use planning.

d) Ireland

Ireland has made several attempts to properly implement the Directives and has had to amend the legislation a number of times. Under the initial regulations implementing Directive 85/337/EEC, development consent (planning permission) and EIA were required for peat extraction projects involving an area exceeding 50 hectares. Prior to this, peat extraction did not require planning permission under national law. The Commission brought infringement proceedings against Ireland for failing to properly transpose the Directive, in that the 50 hectare limit took no account of lesser areas in environmentally sensitive areas and the Directive could be negated by project splitting.

The Commission also indicated that the subsequent Planning and Development Regulations 2001 did not properly transpose Directive 85/337/EEC, as amended by Directive 97/11/EC. These Regulations were amended and under the new Planning and Development Regulations 2001 to 2005, planning permission and EIA are required for peat extraction in a new or extended area of 30 hectares or more, peat extraction to include any ancillary drainage. Peat extraction in a new or extended area of less than 10 hectares or in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced prior to the coming into force of the Regulations is exempt from development consent. This exemption is subject to conditions and limitations, in particular that no extraction shall be likely to have significant effects on the environment by reference to the characteristics and location of the proposed development and the characteristics of the potential impacts. Questions have been raised regarding the validity of this exemption.

e) Latvia

Directive 85/337/EEC, as amended by Directive 97/11/EC was implemented by the Act on the Assessment of the Effects on the Environment, which came into force on 13th November 1998. An EIA is required for peat extraction where the area of the site is in excess of 25 hectares. Regulations were implemented in February 2004 in relation to the

categories of activities where member states have a discretion as to whether or not to require an EIA.

f) Lithuania

Under the legislation implementing Directives 85/337/EEC and 97/11/EC, a comprehensive public briefing process is provided for, which involves announcements in relation to industrial construction projects within the local area and in the local press and consultations with the interested public, in written form or by public questioning.

Implementation of the Directives has led to extra time and financial resources being spent by enterprises on e.g. additional laboratory testing, environmental evaluation projects planning and public relations.

g) Sweden

The EIA Directives were implemented by the Swedish Environmental Code which came into force on 1st January 1999. Peat bogs over 150 hectares in area or with an annual production of over 20,000 cubic metres of peat always require an EIA to be carried out.

No significant difficulties were experienced in relation to the implementation of the Directives. The pre-existing legislation already set out guidelines for the process and the information which an environmental impact statement should contain. Some smaller peat industries however now need to employ a consultant to manage the EIA process, whereas previously they would not have had such need.

h) United Kingdom

The requirement for an EIA under these Directives has been incorporated by national legislation into local authority planning consent procedures in the UK. The Directive was given legal effect in England and Wales by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. For peat extraction projects where the surface area of the site is less than 150 hectares, an EIA is required only if the particular project is likely to give rise to significant environmental impacts, which is judged by reference to a system of thresholds and criteria. For development where the particular threshold or criterion is not met, EIA is not normally required, unless the development is in or partly in a "sensitive area". Such areas include Sites of Special Scientific Interest, National Parks, Areas of Outstanding Natural Beauty, the Broads, World Heritage Sites and scheduled monuments. Separate regulations were enacted in Scotland and Northern Ireland implementing the Directives.

All existing planning consents for peat extraction had to be reviewed to take into account the environmental aspects of the Directives. This has taken a long time to complete and has led to environmental bodies further opposing peat extraction.

A.2. Summary of Impacts of Directives 85/337/EEC and 97/11/EC on Peat Industry

The discretion given to member states as to how to determine whether or not to require an EIA for peat extraction in areas where the surface area of the site is less than 150 hectares has led to significant variations between member states in relation to the thresholds or criteria applied. These vary from requiring an EIA for areas of 30 hectares or more in Ireland, to 25 hectares in Latvia to 10 hectares in Germany. Under new legislation in Estonia mechanical mining of peat will always require an EIA, no matter what the surface area of the site. In Finland an EIA is being required for increasingly smaller areas.

Ireland seems to have experienced the most difficulty in implementing the Directives. It has made numerous attempts to do so, which has obviously led to some uncertainty amongst peat producers. Other difficulties experienced by member states include a failure to sufficiently involve the public and a lack of a clear practice in construing and applying the law in Estonia. In Finland the EIA is a lengthy and expensive process, which has led to long delays in obtaining extraction permits. Similar problems regarding expense apply in Lithuania. Germany and Sweden do not seem to have experienced significant difficulties as a result of the Directives, as they already had in place legislation regulating projects and facilities. However the process has become more complicated in Sweden. The United Kingdom reviewed all pre-existing extraction permits, which has led to opposition to the renewal of some permits from environmental bodies, thereby causing problems for those producers.

A.3. The Habitats Directive and the Birds Directive

EU nature conservation measures in the form of The Habitats Directive, Directive 92/43/EC of 21st May 1992 on the conservation of natural and semi-natural habitats and of wild flora and fauna and The Birds Directive, Directive 79/409/EEC of 2nd April 1979 have significantly impacted on peat extraction. Under the Birds Directive member states must designate Special Protection Areas (SPAs), based on ornithological criteria, in order to preserve and restore habitats for wild birds and create new habitats. Exceptions are narrowly defined and mainly only allowed for the purposes of protecting public health and safety and for research purposes. The Habitats Directive requires member states to designate a Europe wide network of Special Areas of Conservation (SACs), known as Natura 2000. This network incorporates areas protected under the Birds Directive.

Development and other activities in SACs, especially those hosting priority sites is severely constrained. Member states are required to subject any plan or project which could have significant effects on a SAC to an appropriate assessment, of which an EIA is deemed appropriate for many developments. Plans or projects which could adversely affect the integrity of a SAC are not permissible unless justified by reasons of overriding public interest and where there is no alternative solution. If permitted for reasons of overriding public interest, all compensatory measures necessary to ensure overall coherence of the Natura 2000 network must be taken.

a) Estonia

The Birds and Habitats Directives were incorporated into Estonian law by supplementing existing laws and adopting new laws. The Nature Conservation Act entered into force on 1st May 2004 and provides regulation for the formation of Natura 2000 sites. Under the Environmental Impact Assessment and Environmental Management System Act (EIAEMSA), environmental impact shall be assessed if proposed activities either alone or in conjunction with other activities, may potentially significantly affect a Natura 2000 site. An authorisation, including an extraction permit of mineral resources may be issued if permitted by the protection procedure for Natura 2000 sites and if the decision maker is convinced that the proposed activities do not have a negative impact on the integrity of the site or on the purpose of protection thereof.

b) Finland

Finland has fully implemented the Birds and Habitats Directives as part of the Environmental Impact Assessment and environmental licensing process. In building up the Natura 2000 network of sites, several peat producer owned peatlands were incorporated into the network and producers were no longer able to commence peat production in those areas.

The Directives have had a number of practical effects e.g. a producer will seldom be granted an environmental licence for the entire planned production area, but some parts are excluded or the entire licence is denied. There can be other obligations such as the producer being required to set up artificial nests for falcons etc.

c) Germany

Under German national law, the legislative powers in the area of nature conservation lie with the national government as opposed to the federal states. However, the federal states may still enact their own divergent provisions. Only the general principles, adherence to which is mandatory are set out by the national government. Once a peatland is identified as a potential Special Bird Protection Area, peat extraction is no longer

permitted. Only where such area actually becomes protected, can peat extraction be permitted.

The Act Revising the Legislation of Nature Conservation and Countryside Management and Modifying Other Legal Regulations of 25th March 2002 aided the implementation of the Birds and Habitats Directives. Under this, the federal states were required to enact their own regulations to facilitate the establishment of the Natura 2000 network. An EIA is envisaged for projects in a Site of Community Importance or a European Special Bird Protection Area.

The EIA Directives and Birds and Habitats Directives were implemented relatively late into German law. The implementation did not always correctly transpose the Directives, so that several pieces of legislation had to be amended a number of times. There is still a lack of legal certainty surrounding the implementation of the Directives. The Directives have also enormously complicated the approval procedure, in particular the effort and costs associated with the application process are greater and owing to the more complex legal situation, the prospects of success of an application are often difficult to gauge. The duration of the approval procedure has also increased to between 2-3 years.

d) Ireland

The European Communities (Natural Habitats) Regulations 1997 implemented the Habitats Directive in Ireland. The Birds Directive was implemented by the European Communities (Conservation of Wild Birds) Regulations 1985, as amended by the European Communities (Conservation of Wild Birds (Amendment) (No 2)) Regulations 1996. Other legislation in the form of the Wildlife (Amendment) Acts 1976 and 2000 also provides protection for natural heritage areas. As a result of the Directives even if peat extraction on European sites does not require planning permission or an EIA under the planning laws, consent is required for such extraction from the relevant government minister and before such consent is given there is likely to be a request for an EIA or at least a report based on the criteria set out in the Habitats Directive.

e) Latvia

The Act on Especially Protected Natural Territories, which entered into force on 7th April 1993 implemented the Habitats Directive. The list of protected sites of European importance includes a number of peat bogs, where exploitation is prohibited because of rare flora. Legislation has been drafted in relation to the establishment of nature reserves, biosphere reserves and national parks. The exploitation of peat bogs in national park areas and nature reserves is forbidden or restricted. Written permission for any extraction is required from the protected area's administration, who undertakes an EIA.

f) Lithuania

The Birds Directive was implemented into Lithuanian law. However, it seems that the Habitats Directive may not have been fully implemented.

g) Sweden

The Swedish Environmental Act implemented the Birds and Habitats Directives. A lot of areas designated as Special Protection Areas or Natura 2000 sites were already protected as national parks or nature reserves under Swedish law. One problem that has arisen out of the Directives is that it is open to a party to request that a specific area be classified as a SPA when the licensing process is quite advanced. Industry is also often not aware of the Directives. Special rules apply to quarries and a permit will not be granted for a quarrying operation that is likely to be detrimental to the habitat of any endangered, rare or care-demanding animal or plant species. The licensing process sometimes makes reference to individuals of species and not the population and in other cases makes reference to the Birds Directive, even though this is not the aim of the legislation.

h) United Kingdom

The Habitats and Birds Directives were transposed into UK law by the Conservation (Natural Habitats & c.) Regulations 1994. These set out clear processes to secure the management of appropriately designated sites i.e. Special Areas of Conservation and SPAs. Under the Regulations, English Nature has been given a statutory advisory role in relation to development proposals that affect European sites.

All existing peat extraction planning consents in the UK have had to be fully reviewed with the Mineral Planning Authority (some of which dated back to the 1950s) to bring them in line with current environmental considerations, taking into account factors such as restoration procedures, water quality, employment conditions etc. The UK Planning Authority also had to consult environmental bodies and in some cases these bodies attempted to get these planning consents revoked.

A.4. Summary of Impacts of Directives 79/409/EEC and 92/43/EC on the Peat Industry

The main effect of Directives 79/409/EEC and 92/43/EC on the peat industry is that activities within peat bogs in areas designated as Special Protection Areas or Special Areas of Conservation (SAC) are severely curtailed. There is some overlap with the Environmental Impact Assessment (EIA) Directives in that an appropriate assessment is required for activities which could significantly affect a SAC, which generally takes the form of an EIA.

Germany experienced difficulties in properly transposing these Directives and had to amend the legislation a number of times. As a result, there is a lack of legal certainty surrounding the Directives amongst peat producers. Furthermore, the approval procedure for peat extraction now involves much greater expense and time. In contrast, Sweden seems to have experienced few problems as a lot of the Natura 2000 sites were already protected under national law.

Exploitation of certain peat bogs across the EU has been precluded, due to their inclusion within the Natura 2000 network. When applying for permission to extract peat in a SAC, consent may be denied or conditions can be included in relation to the preservation of habitats. As with the EIA Directives, the UK reviewed all existing peat extraction consents to bring them into line with the Birds and Habitats Directives, leading to opposition to renewal of certain permits from environmental bodies.

A.5.Pollution

The important EU legislation on pollution which impacts on peat extraction is Directive 96/61/EC of 24th September 1996 on integrated pollution control (IPPC), which mandates a system of licensing for polluting emissions. It seeks to manage and control air, including odours, water, land and noise emissions in a holistic and integrated manner. Operators are expected to minimise the environmental effects of their facilities and to prevent any environmental damage or accidents.

Council Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life also has relevance in relation to peat extraction, in that it prescribes a suspended solids limit of 25 mg/litre for relevant waterways. The Water Framework Directive which introduces new, broader ecological objectives designed to protect and where necessary restore the structure and function of aquatic ecosystems also has implications for peat producers. Under the Directive, protected areas are subject to more stringent protection measures than other areas

a) Estonia

Directive 96/61/EC has been implemented in Estonia through the Integrated Pollution Prevention and Control Act of 1st May 2002, which sets out a system for issuing individual integrated environmental permits. These permits replaced previous permits granted under the Water Act, Ambient Air Protection Act and the Waste Act. The permit grants authorisation to operate all or part of an installation in a manner which guarantees that the activities carried out have the minimum possible harmful effect on the environment. A permit is required for the processing of mineral materials and is issued by the county environmental authority of the Ministry of the Environment.

The Water Act and the Public Supply and Sewerage Act are the main legal provisions dealing with water protection in Estonia. These acts have repeatedly been supplemented and brought into compliance with EU Directives in relation to water quality and pollution. Directive 78/659/EEC on the quality of fresh waters needing protection was one of the Directives implemented. Under Estonian law a permit is required where water is used with technical equipment, constructions or substances which could affect the condition of a water body or aquifer.

b) Finland

A peat producer in Finland must obtain an environmental licence for production and this incorporates the requirements of Directive 96/61/EC. In practice the producer must have a cleaning system/(s) in place for all drainage waters coming from the production area. Usually there are also several obligations imposed in the licence dealing with noise e.g. working hours or production methods limited when near to neighbours, dust emissions e.g. aerial production limitations or production method limitations.

Another legislative provision dealing with water pollution is the Water Framework Directive, which places high obligations on all actors to prevent water pollution. The target is to reduce emissions by 30-50% over the next 10-20 years, in addition to achievements so far. The Finnish peat industry is responsible for 0.1-0.2% of total emissions. It has reduced water pollution by 50% during the last 10-15 years due to substantial investments in drainage water purification systems, but is now under pressure to further reduce its emissions, which are very minor in the overall context.

c) Germany

Directive 96/61/EC was implemented in Germany mainly through the Federal Emissions Law published in 2002 (Bundes-Immissionsschutzgesetz, (BImSchG)). Loading platforms must be approved according to this law. Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life has also impacted on peat extraction in Germany.

d) Ireland

Ireland was one of the first EU countries to introduce integrated pollution control. The Environmental Protection Agency Act 1992 anticipated Directive 96/61/EC. It provided for the setting up of a central agency, independent of government, the Environmental Protection Agency (EPA), and a licence process monitored by the EPA. The Protection of the Environment Act 2003 amended the 1992 Act to ensure compliance with the Directive. The Irish legislation sets stricter thresholds for IPPC licences than the Directive. An IPPC licence is required for the extraction of peat in the course of business involving an area exceeding 50 hectares. The licence contains conditions dealing with

management of the activity, emissions to the atmosphere and water, waste management, noise, water pollution, cutaway bog rehabilitation, monitoring, recording and reporting to the Agency. The Agency must be notified of any emission not complying with the licence conditions and an annual report must be submitted to the Agency. Breach of a licence condition is a criminal offence.

Other legislative provisions dealing with water pollution are generally enforced by statutory bodies called Regional Fisheries Boards, who initiate the vast majority of prosecutions for water pollution. Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life has never been implemented in Ireland. The Water Framework Directive, Directive 2000/60/EC of 23rd October 2000 was implemented by the European Communities (Water Policy) Regulations 2000.

e) Latvia

Directive 96/61/EC was implemented by the Act on Pollution which came into force on 1st July 2001, and which also implemented ten other Directives. Under the legislation, information about polluted areas has to be submitted to the appropriate regional environmental office or to the municipality. This Act has led to inconvenience in the legal exploitation of natural resources e.g. in relation to drainage systems and natural watercourse pollution around peat extraction areas.

The law on Water Management came into force on 16th October 2002 and implemented the Water Framework Directive. One of the purposes of this law is to improve environmental protection of water and to terminate the emission and discharge of especially hazardous substances. Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life and nine other Directives relating to water and environmental pollution were implemented by the Regulation on Overground and Underground Water Quality of 2004.

f) Lithuania

The Integrated Pollution Prevention and Control Issuing, Renewal and Cancellation Rules implemented Directive 96/61/EC and determines whether Integrated Pollution Prevention and Control permissions are required to proceed with economic activities.

There are no other legislative provisions dealing with water pollution. However Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life has been implemented in Lithuania.

g) Sweden

Directive 96/61/EC was implemented by Chapter 9 of the Swedish Environmental Code, which regulates the system of licensing and sets out who shall licence different types of activities e.g. the regional administration, the environmental courts, the Environmental Supreme Court or the Government. Where necessary the Government may issue rules requiring precautions which go beyond the scope of Sweden's obligations as a member of the EU or its international undertakings.

The Swedish Environmental Code contains further provisions in relation to water pollution. Directive 78/659/EEC was also implemented by the Environmental Code and special water authorities have been set up under the legislation. These authorities are working towards developing criteria for the protection of water bodies in Sweden. These criteria will be connected to criteria for maintaining biodiversity as well as in relation to water pollution levels. These more stringent rules will be used during the environmentally hazardous activities licensing process.

h) United Kingdom

In England and Wales Directive 96/61/EC was implemented by The Pollution (Prevention and Control) (England and Wales) Regulations 2000. Separate regulations implemented the Directive in Scotland and Northern Ireland. The regulations replaced the previous system of integrated pollution control of industrial processes. In England and Wales the Environment Agency has responsibility for licensing 85% of installations and the relevant local authority is responsible for the remaining installations, which are for sectors generally regarded as presenting a lower pollution risk. The Scottish Environment Protection Agency and the Northern Ireland Environment and Heritage Service are responsible for licensing in Scotland and Northern Ireland respectively. Failure to comply with permit conditions is a criminal offence.

Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life has been implemented in the UK. No further information was provided in relation to other legislation on pollution.

A.6. Summary of the Impact of Directive 96/61/EC and other EU Legislation on Pollution on the Peat Industry

As a result of Directive 96/61/EC an integrated pollution prevention control licence is required for activities which involve polluting emissions and this could include peat extraction for commercial purposes. Some member states such as Ireland and to a certain extent the United Kingdom, have set up central agencies to monitor the licensing process. The advantage of this is in terms of consistency as to licensing criteria and conditions,

which could be lacking where licences are issued by different bodies, as in other member states, such as the regional administration or local environmental authorities.

Conditions are imposed in licences regarding emissions with which producers must comply, such as ensuring a proper cleaning system is in place for all drainage waters coming from the production area and other obligations dealing with noise or production methods etc. In some countries such as Ireland, licence holders must submit an annual report to the national authority or in Latvia information about polluted areas must be submitted to the appropriate regional environmental office or to the municipality. Compliance with the various conditions contained in licences can lead to inconvenience and places an additional burden on peat producers in terms of the resources involved in ensuring such compliance.

Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life seems to have been implemented in all member states except Ireland. It obliges peat producers to ensure that suspended solids in relevant waterways do not exceed 25 mg/litre. The Water Framework Directive has also had an impact on peat producers in certain member states. As part of its implementation in Finland peat producers are being put under increasing pressure to reduce emissions to waterways despite already having achieved reductions of 50%, which will involve further significant expenditure on the part of the producers. Special water authorities have been set up in Sweden who are working towards developing criteria for the protection of water bodies. These criteria will be more stringent and will be used in the environmental licensing process, thereby imposing stricter conditions on applicants for licences.

a) Denmark

No information was provided by Denmark on any of these areas, save to confirm that all of these Directives were implemented to a high degree by Danish national law and further that permission is required to extract peat under national law.

B. Other Legislative Provisions Dealing with Environmental Protection

a) Estonia

The Sustainable Development Act of 1995 provides for a national strategy for sustainable development. Renewable natural resources are divided into critical and available resources and the government has the right to establish the yearly limit of both. Under the Electricity Market Act of 2003, producers shall not subsidise generation from renewable energy sources at the expense of other sources and vice versa. The Ambient Air Protection Act of 2004 implemented Directive 96/62/EC on ambient air quality assessment and management. Regulations were enacted under the Act, which require

permits for certain activities, one of which is an activity where the total heat capacity of installed combustion plant upon incineration is 0.3 MW of solid fuel, liquid fuel or gas. One of the most recent laws on environmental protection is the Environmental Liability Act of 2007, which implements Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. It regulates the prevention and cure of environmental damage by the principle that the polluter shall pay.

b) Latvia

Other legislative provisions include the law “On the bowels of the earth”, which aims to ensure efficient conservation of the environment and long term use of the earth’s resources. Regulations have been enacted in relation to licensing and permissions for mining and use of geological information. The 2006 law on Nature Protection Taxes aims to stimulate the efficient economical use of natural resources whilst controlling environmental pollution.

c) Lithuania

Lithuania has implemented a number of other EU Directives dealing with protection of the environment including Directive 92/72/EEC on air pollution by ozone, Directive 96/62/EC on ambient air quality assessment and management, Directive 91/271/EEC concerning urban waste water treatment, Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources and Directive 94/62/EC on packaging and packaging waste.

No information was provided in relation to other legislative provisions in Finland, Germany, Ireland, Sweden or the United Kingdom.

B.1. Conclusions on Impact of EU Legislation on Peat Extraction for Horticulture, Energy and Other Uses

It is clear that EU legislation has had a big impact on how member states regulate the extraction of peat. The area is subject to a substantial level of regulation, in particular in the areas of environmental impact of projects, nature conservation measures and pollution control. Compliance with EU legislation in these areas involves significant expenditure by peat producers in terms of resources, both financial and otherwise. In particular, in appropriate cases, prior to a permit being granted for peat extraction, producers have to submit an Environmental Impact Assessment. This assesses any potential damage to the environment and areas of conservation which a project may cause. However, it requires a substantial outlay by producers and it also has the effect of delaying the permit process significantly. Monitoring of pollution and the setting of permissible levels of pollution is controlled by Integrated Pollution Prevention Control legislation in particular. Where

such licences are required producers must adhere strictly to the terms and conditions therein throughout the extraction process.

Perhaps one of the biggest impacts EU legislation has had on the extraction of peat is that a number of peatlands have been precluded from exploitation by being designated as part of the Natura 2000 network, under the Habitats Directive. Although exploitation may take place in such peatlands, it is only allowed in exceptional circumstances. As a result many producers are unable to use their lands for the purposes they wish.

A further issue faced by EU peat producers is that there are numerous Directives, with any number of national regulations implementing them, which producers are expected to be aware of and comply with. Many member states seem to have had difficulties in implementing some of the Directives, which has created a sense of legal uncertainty in these areas for producers. Also many member states are going further than the requirements provided for under EU legislation by introducing increasingly stringent laws, which will place additional burdens on peat producers to ensure compliance with these ever stricter provisions.

C. Horticultural Peat (Use and Trade)

There are varying standards across the EU in relation to horticultural peat. Some EU member states have enacted regulations in this area, whereas others have not. CEN TC 223 (European Committee for Standardisation, Technical Committee 223) has developed a number of standards for soil improvers and growing media, but these have only been incorporated into French and Belgian law. In all other member states, CEN standards are applied voluntarily. Most member states use national laboratory specific methods or other methods agreed by national quality assurance associations to regulate growing media.

There are also varying criteria in relation to packaging and labelling requirements across the EU. The same packaging is often used for one product across several member states and the differing figures required by the different legislation can lead to confusion.

a) Denmark

National legislation regulates the trade of peat, growing media and fertilisers but is currently under review. It is expected that the new standards will be based upon CEN standards.

b) Estonia

Estonian law does not regulate the use and trade of peat based growing media with any one act. The Fertilisers Act sets out the requirements for fertilisers but is not applicable to fertilisers exported to other EU member states unless otherwise provided for by an international agreement. Generally most peat based growing media produced in Estonia is exported to other member states.

Provisions in relation to the Community eco-label have been implemented in Estonia. The Packaging Act and the Packaging Excise Duty Act have some effects on the trade of peat, as peat packaging is subject to an excise duty. Producers and importers of packaged goods are obliged to keep records of packaging materials and masses thereof and to ensure collection and recycling of packaging waste in amounts provided by the law.

c) Finland

The Finnish law on fertilisers of 29th June 2006, as supplemented by the Ministry of Agriculture decree on fertilisers of 13th February 2007 covers products used in, imported into and exported from Finland. The maximum permitted level of concentration of heavy metal in fertilisers is lower and therefore stricter than in any other member state. This has a significant impact on imports of horticultural peat into the country.

d) Germany

The German Fertiliser Ordinance of 4th December 2003 includes regulations for growing media, soil improvers, fertilisers and soil additives and is currently under review. Only materials and substances listed in the Ordinance may be used in the production of growing media. These must be stated on the labelling along with, if necessary, information on transport and proper storage and use. Materials and substances not listed in the Ordinance may not be used for production and as a result producers can experience barriers to innovation.

e) Ireland

There is no particular legislation on fertilisers in Ireland.

f) Latvia

There is no legislation in this area.

g) Lithuania

LR Standard LST:2006 regulates peat substrates qualities, packaging markings and the product's physical and chemical features, which is similar to other EU member state standards. There is no limit to horticultural peat production and trade in Lithuania.

h) Sweden

There is no specific legislation regulating horticultural peat in Sweden. Environmental legislation contains rules in this area.

i) United Kingdom

The only parameter that must be declared is the volume of growing media in a bag.

j) Other EU member states

Some other EU member states (e.g. Belgium, France, Italy and Spain) have legislation on growing media and other related products, such as soil improvers, which all producers must comply with. However, other member states have no regulations in place.

C.1. Conclusions on impact of EU legislation on horticultural peat use and trade

There is no coherent legislative framework across the EU in relation to growing media, both in relation to the contents of and labelling requirements for such products. The differing regulations across the EU pose challenges for producers exporting to other member states and can amount to barriers to trade, as producers must fulfil all national regulations in the member states to which they export. A further issue is that national legislation in many member states in relation to growing media is being revised, forcing producers to regularly change their packaging or labelling accordingly, at a high cost

The following table gives an overview of the varying legislative standards on growing media across the EU.

National Legislative Barriers to Trade in Growing Media Within the EU

Member States	Legislation of growing media by Member State	Specific labeling requirements with lead to trade barriers by Member State																														
Belgium	<ul style="list-style-type: none"> ● The "Arrêté royal" from the 7 January 1998 defines the legislative obligations for selling growing media in Belgium. ● It includes CEN TC 223 standards ● This legislation will be amended in 2008. 	<ul style="list-style-type: none"> ● The weight of bags containing growing media to be declared is the minimum weight and not the real weight of the bag. This is different from France where the average weight has to be written on the bag. ● The change of legislation to occur 2008 implies that bags for potting soils will have to be redesigned and reprinted with the new parameters to declare. This brings additional costs to the industry. 																														
Denmark	<ul style="list-style-type: none"> ● The Danish legislation on growing media is currently under review. It is expected to be in line with CEN standards. 	<ul style="list-style-type: none"> ● The parameters to declare according to Danish standards are: Volume, pH, EC and N, P, K and Mg-values. ● Producers have to declare the amounts of trace elements added pr. M3, the particle size distribution, the degree of decomposition (according to Danish standards) and finally the name and address of the producer or importer. 																														
Finland	<ul style="list-style-type: none"> ● The Finnish Law on fertilizers products from 29 June 2006 followed by the supplementary decree of the Ministry of Agriculture on fertilizers of 13 February 2007 covers products used in Finland, imported to Finland and exported from Finland. 	<ul style="list-style-type: none"> ● The main difference between the Finnish law and the legislation of the other EU Member States lays in the level of concentration of heavy metal required that can be found in fertilizers. ● Maximum level of component is shown hereunder and is lower (i.e. stricter) than in any other EU Member States. This has a serious impact on imports. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><i>Heavy metal</i></th> <th style="text-align: center;"><i>Max content, mg/kg DM</i></th> <th style="text-align: center;"><i>Max, mg/kg DM,</i></th> </tr> </thead> <tbody> <tr> <td><i>e.g. ashes</i></td> <td></td> <td></td> </tr> <tr> <td>Arsen, As</td> <td style="text-align: center;">25</td> <td style="text-align: center;">30</td> </tr> <tr> <td>Mercury, Hg</td> <td style="text-align: center;">1,0</td> <td style="text-align: center;">1,0</td> </tr> <tr> <td>Cadmium, Cd</td> <td style="text-align: center;">1,5</td> <td style="text-align: center;">15</td> </tr> <tr> <td>Chromium, Cr</td> <td style="text-align: center;">300</td> <td style="text-align: center;">300</td> </tr> <tr> <td>Copper, Cu</td> <td style="text-align: center;">600</td> <td style="text-align: center;">700</td> </tr> <tr> <td>Lead, Pb</td> <td style="text-align: center;">100</td> <td style="text-align: center;">150</td> </tr> <tr> <td>Nickel, Ni</td> <td style="text-align: center;">100</td> <td style="text-align: center;">150</td> </tr> <tr> <td>Zinc, Zn</td> <td style="text-align: center;">1500</td> <td style="text-align: center;">4500</td> </tr> </tbody> </table>	<i>Heavy metal</i>	<i>Max content, mg/kg DM</i>	<i>Max, mg/kg DM,</i>	<i>e.g. ashes</i>			Arsen, As	25	30	Mercury, Hg	1,0	1,0	Cadmium, Cd	1,5	15	Chromium, Cr	300	300	Copper, Cu	600	700	Lead, Pb	100	150	Nickel, Ni	100	150	Zinc, Zn	1500	4500
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France	<ul style="list-style-type: none"> ● France has amended its legislation on fertilizers in 2006. ● French legislation on fertilizers: French Decree n°80-477 from 16 June 1980 implementing the law of 13 July 1979 regarding the organisation of the control of fertilizers and substrates and which is followed by the French Decree n° 80-478 from 16 June 1980. ● France uses CEN TC 223 standards 	<ul style="list-style-type: none"> ● France has not the same labelling requirements for bags of growing media than Belgium. ● France requires producers to declare the average weight of a full bag while in Belgium, producers have to declare a minimum weight on the bag. 																														
Germany	<ul style="list-style-type: none"> ● The German Fertilizer Ordinance from 4 December 2003 ("Düngemittelverordnung") includes regulations for growing media (and soil improvers, fertilizers and soil additives) and is currently under revision. ● The legislation is under review 	<ul style="list-style-type: none"> ● Parameters to declare for general labelling of growing media: <ul style="list-style-type: none"> * Designation as growing media * Type, composition and declaration of the constituents, whereby only materials listed in appendix 2 (tables 8-12) of the Fertilizer Ordinance may be considered and stated in the labelling, if necessary with information on transport and proper storage and use. * Name or company and address of the person responsible for marketing in Germany * Volume in liters or cubic meters * Amounts of As, B, Cd, Co, Cr, Cu, Hg, Ni, Pb, Tl, Zn if certain threshold values are exceeded. ● Parameters to declare for special labelling of growing media: <ul style="list-style-type: none"> * pH value (CaCl₂) * Salinity given in g KCl/liter * Plant available (soluble) nutrients; for N, P₂O₅ and K₂O in mg/l (noting the method), organic matter if the amount exceeds 5 % in dry matter ● The German Fertilizer Ordinance is listing materials and substances that may be used for the production of growing media. These are so-called "positive lists". Materials and substances not listed may not be used for production. Producers experience here a barrier to innovation. 																														

Ireland	<ul style="list-style-type: none"> • No particular legislation for fertilizers 	<ul style="list-style-type: none"> • No apparent barrier caused by the Irish legislation.
Italy	<ul style="list-style-type: none"> • Italy has changed its legislation in 2006. 	<ul style="list-style-type: none"> • The Italian legislation requires the notification of "Torba acida" or "Torba neutra" with pH <or> 5.0, Organic matter 80% or 40% of the dry matter, C value, Organic N etc... These parameters are not in use for growing media but must be labelled anyway on each bag for the Italian market.
Lithuania	<ul style="list-style-type: none"> • Lithuanian Law on growing media. 	<ul style="list-style-type: none"> • Characteristics of peat substrate, labelling criteria for packaging and physical and chemical properties of peat products are defined by the Lithuanian standard LST 1957:2006 (which is based on the European standards EN 12579, EN 12580, EN 13037, EN 13038, EN 13039, EN 13040, EN 13041).
Poland		<ul style="list-style-type: none"> • Poland does not use EU measuring methods for the parameters to declare on labelling bags of growing media. It still uses the DIN-method.
Sweden	<ul style="list-style-type: none"> • No particular legislation for fertilizers 	<ul style="list-style-type: none"> • No apparent barrier caused by the Swedish legislation.
The Netherlands	<ul style="list-style-type: none"> • The Dutch Fertilizer legislation from 1947 ("Meststoffenwet 1947") includes the EU legislation 2003/2003. 	<ul style="list-style-type: none"> • The Netherlands does not use the EU method to calculate the volume of growing media in a bag. It will still calculate the "Watervolume" of the content in the bag.
United Kingdom	<ul style="list-style-type: none"> • British Fertilisers Regulation from 1991 amended in 1995, 1997 and 1998 • EC Regulation 2003/2003. • Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 	<ul style="list-style-type: none"> • In the UK, the only parameter to declare is the volume of growing media in a bag.

D. Energy Peat (Use and Trade)

There is not a huge amount of EU legislation regulating this area. Many member states do not have any production of peat for energy use. Those that do have their own legislation to regulate such production, with can set quotas or limits on the amount of peat which can be extracted for such purposes.

a) Denmark

There is no production of energy peat in Denmark.

b) Estonia

The Earth's Crust Act of 2005 regulates the extraction of mineral resources and sets out the maximum permitted annual rate of extraction. Where the quantity of mineral resources extracted by a permit holder for peat is less than the maximum permitted annual rate, the holder can extract the remaining quantity over the next 3 years. Under the Electricity Market Act, a peat producer has the right to sell electricity generated from peat to a seller designated by the transmission network operator or to receive support from the distribution network operator for electricity supplied and sold to the network if it is generated in an efficient co-generation regime.

c) Germany

There is no production of energy peat in Germany. A very small amount of peat (briquettes, sods, pellets) is used in some local households and small power stations for heating. The German government is considering the prohibition of such usage stating that it is out-of-date and should be prohibited for environmental, health and nature conservation reasons

d) Ireland

Directive 96/92/EC enables member states to take measures by means of public service obligations to secure a proportion of their electricity generation from indigenous sources in the interest of security of supply. Legislation has provided for such public service obligations in relation to peat in Ireland.

e) Latvia

There is no legislation in relation to this area.

f) Lithuania

Energy peat production and trade is regulated by standard LST 1986. There is no limit on energy peat production and trade under the law.

g) Sweden

There are no rules governing the use of energy peat in Sweden. Discussions are taking place between the National Energy Administration and the Environmental Protection Board regarding the possibility of implementing a system of certification of peat bogs due to climate change. Ditched mires and open mires could in future be certified, which could perhaps be viewed as a barrier to trade.

D.1. Conclusions on impact of EU legislation on energy peat use and trade

Peat production for energy use is only carried out in a small number of EU member states. The legislation regulating this area seems to be mainly at a national, rather than an EU level. However, EU environmental legislation would have an impact on the extraction of peat for energy purposes.

Key Conclusions of Study

This study provides a general overview of the impact of EU legislation regulating the peat industry. It is clear that there has been a large volume of legislation relevant to the industry, mainly in the environmental sphere. This has impacted on how member states regulate the licensing process for peat extraction and has resulted in the peat industry having to comply with numerous conditions and requirements both prior to permission being granted for peat extraction and during the extraction process itself, leading to inconvenience and expense on the part of producers.

The EIA Directives provide for a thorough assessment of all potentially harmful environmental effects of a project prior to consent being granted. The Habitats and Birds Directives only allow peat extraction to occur in exceptional circumstances within protected areas and if permitted producers must take all compensatory measures. The legislation on pollution provides for IPPC licences which can monitor emissions coming from peat extraction projects. As a result of all of this legislation, where peat extraction projects are authorised, such projects will most likely to have been assessed thoroughly, so as to ensure that they are conducted in a manner likely to cause the least damage to the environment. Further, polluting emissions are also likely to be monitored throughout the currency of the project.

It can be seen therefore, that there is a comprehensive EU legislative framework in place to deal with the environmental effects of peat extraction projects. Further, many member states are introducing their own provisions in these areas, which actually go further than the EU Directives. The peat industry operates in a highly regulated field and peat extraction projects are subjected to thorough assessment.

There is less legislation in place regulating horticultural and energy peat. Peat producers have experienced significant difficulties in particular due to a lack of coherence in relation to the varying requirements for horticultural peat across member states. This is an area which could benefit from a more comprehensive legislative framework to ensure coherence and prevent any potential barriers from trade as a result of the different national requirements.

Appendix

The above study is based on documents submitted by the following:

- a) Bente Kahr, Denmark
- b) Raul Talts, Attorney at Law, Estonia
- c) The Association of Finnish Peat Industries
- d) R. Almagro Ponce, Solicitor, Germany
- e) John Gallagher, Ireland
- f) Kazimieras Kaminskas, Lithuania
- g) Magnus Brandel, Sweden

It is not clear who prepared the Latvian and United Kingdom documents.

Their participation and help was greatly appreciated.

Fiona Gallagher B.L.

7th May 2008