

## **British Aggregates Association**

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**Immediate**

### **Trade Association Defeats UK Government in EU Court**

The British Aggregates Association (BAA) has won its case in the EU General Court against the exemption or derogation from the Aggregates Levy in Northern Ireland. At present NI quarries pay only 40p per tonne Levy whereas UK mainland producers have to pay £2.00.

The Court agreed with the BAA that the Commission had not conducted a diligent investigation of the Northern Ireland exemption or of the BAA's complaint. The Commission could not therefore lawfully decide that it was compatible with EU law. The BAA had raised a number of further points in this respect but the Court decided that upholding one of BAA's points was sufficient to declare the Commission's decision unlawful.

The AGL derogation for Northern Ireland involved State aid. However the EU Commission held that this was justified by reference to the "Environmental Guidelines" that were in force at the time of the Decision.

The Court finding – that the Commission was wrong – effectively annuls its decision and the Commission must now reconsider whether the exemption is legally acceptable.

There would now appear to be four possible outcomes:-

(a) The Commission could decide on different grounds that the exemption is justified but this is very unlikely for legal reasons.

(b) The Commission could decide that the exemption was not justified and that any aid granted to date by virtue of its application is illegal. The Commission would then order the UK to recover illegally granted aid, plus interest. In the case of the NI exemption, this would involve a requirement that companies who had benefited from the exemption be obliged to make retroactive payments of the full amount of the Levy.

(c) The UK Government could withdraw its State aid notification, eliminating the need for the Commission to take a further Decision. In practice, if it were to do this, the UK Government would almost certainly have to suspend the exemption and the Levy would be applied in NI at the full rate. This might avoid the need for operators who have benefitted from the exemption to make retrospective payments.

(d) The UK Government might also seek to amend the exemption, in order to formulate it in a manner which would enable the Commission to approve it. In the interim, the same issues would arise with respect to aid granted to date as in scenario (c).

#### **Association director Robert Durward;**

"We are delighted that the court agreed with us that the proper process was not followed with the NI derogation and that it will have to be revised. The previous UK Government proposed to devolve the Levy and this judgment now represents an excellent argument for it to be scrapped altogether."

Now that the BAA has won the argument on discriminatory taxation, quarries in the Republic of Ireland who have paid the full level of tax on aggregate imported to NI may have a claim for repayment. Quarries in other parts of the UK may also be able to make a claim for repayment if they have supplied aggregates to NI.

ENDS:

## Notes for editors;

1. The BAA were awarded their costs from the EU Commission
2. The Government of Great Britain & Northern Ireland, which had joined the action, were ordered to meet their own costs.
3. The full text of the Judgment is available [here](#)
4. The BAA await judgement on their main case against the Levy after their [successful 2008 appeal](#) in the European Court of Justice.
5. The BAA are the recognised trade body of UK independent quarry operators.

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