

### **Aggregates Levy Judgment Could Cost Treasury £600million**

The European Court of Justice, (ECJ), has overturned an earlier EU decision that the 2002 Aggregates Levy (AGL), imposed by the UK Government was lawful and did not constitute State Aid.

**BAA Director Robert Durward;**

"The AGL has not delivered any environmental benefit as it is a cash raising exercise using the environment as a pretext. It is noteworthy that the European Court of Justice has agreed with the BAA on every fundamental point. This makes it very unlikely that the Levy can survive in its present form."

The judgment was in line with the earlier opinion of Advocate General (AG) Mengozzi, of the European Court of Justice, who recommended that the Court of First Instance (CFI) judgment should be quashed.

In reaching his conclusion, the Advocate General criticised several aspects of the CFI's reasoning;

- He agreed with the BAA argument that the CFI was wrong to conclude that the AGL's purported environmental justification somehow exempted it from EU subsidy rules. The AG made it clear that governments do not have carte blanche to implement an unfair and illogical tax under the guise of environmental policy.
- He found that the CFI tried to paper over cracks in the original Decision – approving the AGL – and that they further misconstrued the basis on which that Decision was taken in a mistaken effort to justify its conclusion.
- Finally, and most significantly, the Advocate General found that the CFI failed to carry out a comprehensive review of the legal basis of the original EC Decision to approve the Levy. He went on to say that such an error impugned the very basis of the CFI's ruling and "could undermine the entire assessment of the merits of the [Commission's] decision."

**Robert Durward;**

"It would appear that the CFI will now have little option but to declare that the Levy, as it stands, constitutes illegal State Aid and must be modified or scrapped. However, for the Levy to comply with Article 87(1) EC it would have to be extended - retrospectively - to all currently exempt minerals such as coal, slate and china clay."

ENDS:

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Notes for editors;

1. The AGL was introduced in April 2002 at £1.60 per tonne and increased to £1.95 per tonne from April 2008.

2. The text of the ECJ Judgment is [here](#) (click onto top link "Judgment" on BAA case file)
3. The text of AG Mengozzi's opinion is [here](#) (click onto "Opinion" link on BAA case file)
4. The AGL raises around £600million each year for the Treasury
5. The use of primary aggregates has not been reduced by the levy. Sales of virgin aggregates have increased by 8 million tonnes a year since the levy was introduced;– and Treasury extracted payment from an additional 20 million tonnes in 2007compared with 2003. [Read report](#)
6. The UK had a recycling rate four times greater than the EU average before the levy was introduced. [Read report](#)
7. The AGL has produced its own environmental problems. Levy exempt products are now being hauled longer distances to replace locally sourced materials. This has greatly hampered the quarry industry's ability to deal with its own by-products and there are growing mountains of secondary aggregates appearing in quarries across the country.
8. The ECJ judgment may have implications for other "Eco Taxes."
9. [Contract Journal report](#)
10. [Construction News report](#)
11. [Quarry Management Report](#)
12. [ENDS report bulletin](#)
13. [BGS](#)

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