

*COMMON FORUM on Contaminated land in the  
European Union*

*Report of the meeting in Bilbao 2 and 3 November 2006*



**DRAFT**

December 14, 2006

Dr. Joop J. Vegter

## Introduction

### ***Welcome speech***

Ibon Galarraga, deputy Minister of Environment in the Basque country opened the meeting with a welcome speech. He stressed the importance of international cooperation especially for the development of contaminated land policy in the Basque country. The Basque country has an important industrial past. There were no regulations concerning soil protection or contaminated land remediation. In view of the need to redevelop old industrial areas a master plan for land protection was developed and finalized in 1994, which was celebrated with an international conference (see picture). Many old industrial areas have been revitalized as a result of this master plan. To cover the wider issues of soil protection and to put soil better on the political agenda a law was developed in 2005.

65% of the Basque country is affected by contamination including diffuse pollution. There is a big pressure due to land shortage. The solutions for contaminated land should be linked to the socio-economic system. This integration is important in view of sustainable development. The role of the public sector in this development is a difficult discussion. Good regulations are important but so are market opportunities for reuse of contaminated land. In any case knowledge transfer and exchange of practical experiences should be encouraged in order to reach a more integrated approach and optimal cooperation between the public and the private sector.

The Basque country welcomed the recent development a soil protection policy at the EU level and the publication of a proposal for a Soil framework directive. A common EU policy will result in a better position for soil on the political agenda of EU member states. It should however not interfere too much with existing and successful contaminated land policies.



### ***“Tour de table”***

During the tour the table the participants introduced themselves and gave a short (personal, many EU member states have not yet formulated a formal national position) impression of the way the proposals for the EU soil strategy and the Soil framework directive were received in their country. As a general trend the new EU soil policy packaged is welcomed because it put's soil in a better position on the political agenda. However most Common forum

members and also the representatives from other networks tended to find the proposals for contamination too detailed.

Anna-Maija Pajukallio [Finland]: first impression is OK, but contamination goes too far in detail; it's not a "framework" anymore; there is too little room for local aspects in decision making.

Paul Nathanail [Cabernet network]: Many member states do not have a contaminated land policy. The new soil framework directive may be a good basis, but Cabernet had the impression that EC has not taken lessons from what has gone wrong in some member states with too detailed and too sectoral policies for contaminated land

Joerg Frauenstein [Germany]: Many elements in the strategy and the directive reflect COMMON FORUM ideas. The proposed directive is a good opportunity to develop a common policy and to keep soil on the political agenda, if the proposal is not accepted in the end, this opportunity may be gone for next 10-20 years.

Arantzazu Urzulai [Basque country]: EU soil policy including a directive is important to keep soil on the political agenda.

Eduard Marquez [Catalonia]: The directive helps to implement policy in Spain and should be welcomed.

Erik Høygard [Norway]: Norway is positive about the directive, as it will ensure focus on remediation of contaminated soil, also in countries where little is done on contaminated land. The directive should give enough flexibility, so that countries that have little experience get time to learn from others. There should be room for improvement in details of the current proposal.

John 'O Neill [Ireland]: There is no formal national position yet. The directive will probably be endorsed but there are doubts about the systematic approach for contaminated land in the directive.

Victor Dries [Flanders]. The directive is a positive contribution in view of soil protection. A strong point is that the directive addresses sealing. Soil resources should have the same level of protection as water resources. The level of detail in some parts of the directive (contamination) may be questioned.

Anja Sinke [Nicole network]: Industry sees a number of questions concerning the implementation of the directive. There seem to be overlaps with other directives, which may give rise to problems in implementation, which should be avoided. The relation with other directives should be clarified.

Francesca Quercia [Italy, also representing EEA in this meeting]: Italy is in favour of a directive. Italy is changing its legislation towards a more risk-based approach. There should be more balance in directive on several potential pressures. There are also questions about the inventory and the obligations for assessment of soils which are mainly on the public authorities.

Ana Alzola [Basque country]: Will the directive imply a revision of the present Basque inventory? It is hard to measure consequences of that. The directive gives a timetable for authorities, which may conflict with the current Basque plan. Why do authorities have to do all investigations?

Sophie Capus [Luxemburg]: Luxemburg needs the directive. The implementation will give a chance to create a clear line in how to deal with contamination. Luxemburg will not be able to make an own strategy on how to work out risk assessment. A toolbox on EU-level with instruments would be very welcome. The deadlines and the duty for investigation on the public sector as described in the directive will be problematic. There seems to be no room for temporary solutions before the (final) remediation.

Jean Luc Perrin [France]: France is positive about the risk based approach, but the proposals for contamination are too detailed, especially concerning the inventory and investigation duties. The timetable is too narrow and there seems to be not enough room for existing policies. Before proposing something for a directive one should learn from mistakes: An exhaustive inventory will not work, Remediation has to be linked to real estate instruments/market, the soil regulation should be coherent with other legislation.

Robert Pentel [France]: Misses the choice between remediation and management of contaminated sites and sees problems in the “comitology” procedures.

Martin Schamann [Austria]: There is no national position yet, but I see benefits from a directive. As for Austria, mainly to stimulate the government in establishing a strategy for site remediation. So far, such an overall strategy is missing. Unfortunately, some important aspects in managing contaminated sites, such as inventories or soil status report are formulated as a goal itself instead of tools to support the management. An overall EU-wide (framework) approach for managing the contaminated sites problem is missing in the draft directive.

Christoph Wenger, [Switzerland]: The whole package should be welcomed in Switzerland. The country has a lot of separate regulations, they do not fit together, and this may be cured by the EU soil policy package. Evaluation of contaminated sites, as stated in the directive, by measuring and comparing concentrations is too simple, and not an incentive for risk based management. There should be more pressure on the private sector to investigate. The definitions (of contamination and other terms) in the directive are good.

Sheenah Engineer [UK]: UK welcomes the fact that there is a directive to protect soil and to prevent contamination. There are some concerns about the contamination part of the proposed directive: how it links to existing approaches, especially the inventories and timescales may become a problem.

Miech de Steenwinkel [Netherlands]: The Netherlands supports the strategy but not the directive; The directive gives lot of extra work to be redone. There is a fear for a bureaucratic reporting system. Soil contamination has to be dealt with at the national (or even regional or municipal) scale as soil does hardly move to other countries. The EU framework directive for soil talks about soil without groundwater and the ecosystem, which is not consistent with the Dutch legal framework.

Eddy van Dyck [Flanders, Belgium]: He underlines the positive attitude towards the directive already put forward by Victor Dries.

Andreas Bieber [Germany]: There is no formal German position, only different opinions. Germany is currently renewing national soil regulations (soil ordinance) to make it more practical. Germany will try find common views about the EU soil strategy and the Soil framework directive during their period of presidency. Clear opinions on texts that may be interpreted in different ways are important for this.

Lazlo Adam and Gabor Hasznos [Hungary]: Hungary welcomes a directive; Elements in directive may take lot of work however, like adapting existing inventories to the requirements of the directive. The directive should also be more flexible concerning remediation measures, there should be room for (temporary) risk management.

Other issues:

Netherlands: Miech de Steenwinkel mentions the publication of a study of the effects of soil contamination on human health and related costs.

Flanders: Will send a translated text of their new legislation to the COMMON FORUM secretary for further distribution.

## **State aid and remediation of contaminated sites**

This was one of the main themes of the meeting. More and more countries discover that funding of contaminated site remediation is difficult without using the opportunities of the market. Linking with plans for urban renewal and engaging in public private partnerships is observed more frequently nowadays. Discussions in networks and projects on brownfield redevelopment and urban regeneration (CLARINET, RESCUE, CABERNET, REVIT) have pointed out some difficulties in dealing with EU state aid rules. The session started with four small presentations about experiences with “state aid”.

Paul Nathanail presented the CABERNET point of view. (Historically) contaminated land is one of the many issues to be addressed in urban redevelopment projects. The presentation gave an in depth analysis about possible state aid restrictions and gave some recommendations (see attached presentation: cabernet.pps). The general conclusion was that urban redevelopment – being a very specific category- would greatly benefit from a more lenient approach towards state aid.

John O’Neill presented the Irish situation.(see attached presentation: Ireland.ppt). Experience with adverse effects of state aid rules on contaminated land remediation and urban renewal is rather limited. Although in some larger urban renewal project state aid rules may have been an issue but it seems not to be a big problem.

Anna Maija Pajukallio presented the Finnish experience.

According to the Environmental Protection Act (86/2000) it is clear who should pay for the remediation

1st: polluter

2nd: property owner

3rd: local municipalities

If the costs increase so that they become excessive, the local authority shall establish a need for and carry out soil treatment. For these cases were the polluter cannot be assigned, it is

possible to get financing from the state budget. The presentation explained the criteria to put this policy into practice (see attached presentation: Finland.ppt). The presentation also gives an overview of the Finnish contaminated land expenses and funding.

The presentation of Margot Meijer from the Netherlands (see attached presentation: Netherlands.ppt) showed results of a questionnaire about state aid experience in Member states. The results of the questionnaire were not very complete. It appeared that only a few Member states have notified the EU state aid authorities in Brussels concerning contaminated land funding mechanisms. State aid (in case the polluter can be held liable) is only allowed for very small enterprises (so called “de-minimis regulation, maximum €100.000,- which may become €200.000 in 2007). Of course state aid is allowed for orphan sites. The key issue is that the polluters should pay for the remediation. It is at present unclear whether the soil investigations needed for risk assessment are also part of state aid restrictions or can be funded by the authorities.

Saskia Dirkzwager- de Rijk (EU DG COMP) gave an overview (see attached presentation; eudgcomp.ppt) about current thinking about state aid in the EC. The discussion about contaminated land remediation and state aid rules is very relevant in view of the revision of the guidelines by mid next year. Among other changes the so called de minimis amount is proposed to be raised to €200.000. Further information can be found at the State aid website: [http://ec.europa.eu/comm/competition/state\\_aid](http://ec.europa.eu/comm/competition/state_aid) .

There is an electronic newsletter and practical experience is added to a vademecum. Annex I of this vademecum contains a long list of approved aid schemes with descriptions.

### ***Brief reports of the group discussions on state aid***

Reports of the groups are summarized in the following attached powerpoint presentations:

Group 1: group1report.ppt

Group 3: group3report.ppt

Group 4: group4report.ppt

Group 2 did not use powerpoint and their conclusions are summarized below:

Report group 2:

The group discussed some questions, statements and practical conclusions.

A] Questions:

What are the kind of requests for allowing state aid? There are 600 dossiers a year, but these are certainly not all about soil. However different member states have cases that have been approved (UK, NL, UK, Greece, Italy). If the polluter has to pay in principle what does he pay for? Does state aid also apply to investigations?

If remediation is part of a regional development scheme is state aid also applicable to EU structural funds?

B] Statements and idealistic perspectives:

Could some form of state aid be acceptable to help to solve contamination problems for honest companies? The practical implication of the polluters pay principle depend on national liability regimes which may differ between member states. How can state aid rules be harmonized in EU if liabilities remain different? If we cannot harmonize the past than subsidizing a remediation of historical contamination should not be restricted by state aid rules, especially if these do not distort competition.

C] Practical conclusions

There is need for state aid for contaminated land remediation, especially in new member states.

State aid rules should apply for big companies who can “shop” between countries and distort competition; when there is no risk for transborder competition on should be free to apply state aid? The market is not disturbed in such case.

Reactions of Saskia Dirkzwager-de Rijk (EU DG COMP) on a few issues raised in the group reports:

- Polluter pays is of utmost importance in Europe, because it is in the EU treaty. It is linked to liability regimes according to the national regulation in the member states. This cannot be easily changed.
- The characterisation or investigation of the contamination does not seem to have effect on competition, which means as a first impression that there are no restrictions concerning state aid for these activities.
- Some groups proposed to make an exception for funding of remediations of historical contamination. This is not possible, as long as there are liable polluters according to national regulations. This is in the EU treaty!
- However there can be more flexibility for SME's (more eligible costs in environmental texts); most companies are SME's
- Some group mentioned the limited time frame for complaints in cases where state aid is applied without approval. It is only possible to recover up to 10 years according to procedural regulations; the procedural regulations seem to be linked experiences from court cases
- The fact that land value can be negative due to soil contamination is an interesting issue. Funding can be necessary to give the land some positive value. This issue needs further study and discussion.

## **Field trip” to the Guggenheim museum**

Before the evening visit to the Guggenheim museum, an impressive presentation by Ana Alzolla showed the COMMON FORUM what has been achieved in Bilbao in urban development on contaminated land. The masterplan (a strategic policy approach) for contaminated land in the Basque country was obviously a big success. The presentation will be available on the COMMON FORUM website. Below just an impression of old and new Bilbao.



## EU soil protection policy and contaminated land

Luca Marmo (EU DG ENV) introduced the EU soil policy package with special attention to contaminated land requirements in the proposed Soil Framework Directive (see attached presentation: LucaMarmo - Common Forum - Bilbao.ppt). Many COMMON FORUM members have heard earlier versions of the presentation, but each presentation contained new elements to clarify doubts. Those who have attended the NICOLE meeting in Leuven on 5 and 6 October may remember the discussions about different liability regimes that apply to contamination and contaminated land. This issue was now clarified in the current presentation. The “progressive” adaptation of this presentation will certainly contribute to a better understanding of the directive, although questions may still arise.

As mentioned by Luca, sediments are not addressed in the soil framework directive, because they are subject to the Water Framework Directive. If needed, this could be further clarified in the proposal, like the relation between soil and groundwater and the different legal EU regimes that apply to these compartments. In any case, Luca mentioned that, although excluded from the definition of "soil" (to avoid a double legal regime), groundwater is also part of the concept of "environment". As such, the soil framework directive will also be protective for groundwater. In practice, if there is a groundwater problem without soil contamination, the WFD prevails. If soil is the source of the problem, then the soil may be regarded as a “contaminated site” to the extent that the presence of dangerous substances poses a significant risk to the groundwater environment.

The directive does not intend to say that investigations have to be paid by member states; member states have to make sure that an inventory is set up/created; Luca clarified that the wording in Art. 11(3) put an obligation on the competent authorities to carry out an investigation, not necessarily to pay for it. However, to better clarify this intention, the text in Art. 11(3) could be reformulated as “member states shall ensure that investigations are carried out ...”.

Most COMMON FORUM members found that the contamination part of the directive is too detailed and focuses too much on chemical analyses. It should focus more on risks and risk assessment. Risk assessment usually makes use of tiered assessments involving “preliminary” and “detailed” investigations. Sometimes it will be necessary to measure concentrations but there are many cases where this is not necessary (concentrations already known to be very high for instance) and sometimes even misleading (concentration of chemicals in soil outside an almost leaking underground storage tank). It seems better to give descriptions of preliminary and detailed risk assessments in technical guidance documents.

Luca said that the Commission wanted to make sure that a systematic approach to soil contamination was adopted by Member States. Chemical analyses are part of this approach and would sooner or later be needed in any type of risk assessment procedure. Luca stated that it would be a caricature of the Commission's proposal to say that the presence of dangerous substances alone determines a significant risk. But it is a pre-condition.

The discussion about the assessment sites was illustrated with two diagrams proposed by Joop Vegter to structure the discussion. The first one (except the lines in red) describes the procedure outlined in the soil framework directive. Risk based decision making (as described for contaminated land in the CARACAS and CLARINET concerted actions) may also consider the red lines. Sometimes enough is known from the history of a site or by experience

with similar sites that enough certainty to make the decision whether the site is contaminated is reached after a first investigation. Sometimes it is also possible to skip the site specific risk assessment part in cases of very severe pollution. This is not saying that risk assessment should be skipped, it is only unnecessary to investigate everything in detail just to label the site as contaminated. Further risk assessment may be necessary for the remediation but that is beyond the scope of the contaminated land inventory.

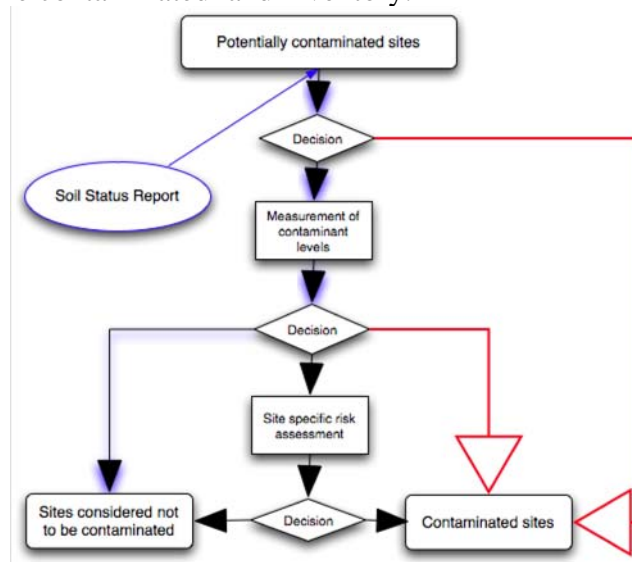


fig 1. explained in text.

As an alternative fig 2 was presented which only refers to a tiered risk assessment approach to make the decision whether a suspect site is contaminated.

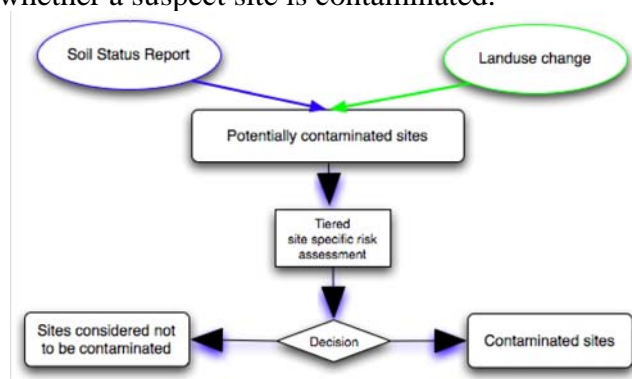


fig 2 explained in text.

Joop illustrated the approach described in fig 2 as less detailed and more “framework” like, with a better link to risk assessment and avoiding the perception of the fixed systematic protocol for the contaminated land inventory in the framework directive.

Luca stated that the process of building a contaminated land inventory is intended as a dynamic concept, in the sense that periodic updates have been built in the directive; however some participants felt that this is not clear enough from the text.

The COMMON FORUM felt that it is important to continue this discussion since much of the opposition concerning the directive stems from perceived or real inflexibility or lack of “dynamics” in the contaminated sites chapter. Moving certain details to guidance documents, for instance as illustrated in fig 2, is just one of the many options to consider in this discussion.

## **Next Steps**

The next meeting will be held in Stuttgart (Germany) adjacent to the CABERNET/ REVIT conference, 24 till 27 april 2007. Unfortunately there was no time to discuss research news.

ANNEX 1 Meeting agenda

***Agenda***  
**Thursday 2 November 2006**

<b>Session 1</b> <i>(10:00-11:30)</i>	<b>WELCOME AND GENERAL MATTERS</b>	
10:00	Welcome address Ibon Gallarraga, Deputy Minister of Environment of the Basque country Short information about the meeting	Ana Alzola & Joop Vegter
10:30	News and views from the COMMON FORUM, tour the table: “First impressions on EU soil policy package”	All members
<i>11:30</i>	<i>Coffee/Tea Break</i>	
<b>Session 2</b> <i>(12:00 –13:00)</i>	<b>STATE AID AND REMEDIATION OF CONTAMINATED SITES part 1</b>	
12:00	Introduction to the main theme of the day: contaminated land remediation and state aid.  Small presentations by a few COMMON FORUM members and from CABERNET <ul style="list-style-type: none"> <li>• Paul Nathanail - CABERNET network</li> <li>• Dr. John O'Neill - Ireland</li> <li>• Anna-Maija Pajukallio - Finland</li> <li>• Margot Meijer - The Netherlands</li> </ul>	Joop Vegter
<i>13:00</i>	<i>Lunch</i>	
<b>Session 2</b> <i>(13:00 –17:00)</i>	<b>STATE AID AND REMEDIATION OF CONTAMINATED SITES part 2</b>	
14:00	EU state aid rules and contaminated land remediation programmes and projects. A presentation by EU DG competition,	Saskia Dirkzwager- de Rijk (EUDG competition)
14:30	Question and answers	
<i>14:45</i>	<i>Coffee/Tea Break</i>	

15:00	Discussions about state aid and funding of remediation in small groups	
<b>Session 3</b> <i>(17:00 –20,00)</i>	<b>“FIELD TRIP” TO THE GUGGENHEIM MUSEUM</b>	
17:00	Introduction to the contaminated land history and redevelopment of the sites along the River Nervion	
17:30	Travel to the Guggenheim museum and visit of the museum till 20:00	
<b>21:00</b>	<b>Joint Dinner offered by our Basque hosts</b>	

**Friday 9 June 2006**

<b>Session 2</b> <i>(9:00 –10:00)</i>	<b>STATE AID AND REMEDIATION OF CONTAMINATED SITES part 3</b>	
09:00	Reports of the group discussions and general conclusions	
<b>Session 4</b> <i>(10:00-13:00)</i>	<b>EU SOIL PROTECTION POLICY AND CONTAMINATED LAND</b>	
10:00	Presentation of the EC proposals on soil protection policy	Luca Marmo (DG-ENV)
<i>10:45</i>	<i>Coffee/Tea Break</i>	
11:00	Discussion about the EC proposals focussed on contaminated land	
12:00	General conclusions	Joop Vegter
<b>Session 5</b> <i>(12:15 – 13:00)</i>	<b>NEXT STEPS</b>	
12:15	Research news	Joop Vegter
12:30	Next meeting and suggestions from the agenda committee	
12:45	Other urgent matters, closure of the meeting	Joop Vegter
<i>13:00</i>	<i>Lunch</i>	

## ANNEX II

### COMMON FORUM meeting participants

#### **Austria:**

Martin Schamann (Environment Agency)

#### **Belgium:**

«GreetingLine (InsertChampFusion)» ( OVAM Flemish Waste Agency)

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#### **Finland:**

Anna-Maija Pajukallio (Ministry of Environment)

#### **France:**

Jean Luc Perrin (Ministry of Environment)

Robert Pentel (BRGM)

#### **Germany:**

Andreas Bieber (Ministry of Environment)

Joerg Frauenstein (Federal Environment Agency)

#### **Hungary:**

Gabor Hasznos (Ministry of Environment)

Laszlo Adam (advisor of Hungarian Ministry)

#### **Ireland:**

John ‘O Neill (Environment Inspectorate)

#### **Italy:**

«GreetingLine (InsertChampFusion)» (Environment agency, also on behalf of the Eu. environment agency )

#### **Luxembourg:**

Sophie Capus (Ministry of Environment)

#### **Netherlands:**

Miech de Steenwinkel (Ministry of Environment)

Margot Meijer (Ministry of Environment)

#### **Norway:**

Erik Høygard (Norwegian pollution control Authority)

#### **Spain:**

Arantzazu Urzelai ( Labein, Basque country)

Eduard Marquez i Bagallo (Catalan waste agency)

Ana Alzola (IHOBE, Basque country)

**Switzerland:**

Christoph Wenger (Federal Office of Environment)

**United Kingdom:**

Shenah Engineer (Environment agency)

**COMMON FORUM SECRETARIAT:**

Joop Vegter

**GUESTS:**

**EU DG-Environment:** Luca Marmo ( EU-DGENV)

**EU DG-Competition:** Saskia Dirkzwager – de Rijk (EU-DGCOMP)

**CABERNET network:** Paul Nathanail (University of Nottingham)

**NICOLE network:** Anja Sinke ( chair of industry subgroup NICOLE network)