

# **Preliminary report and conclusions of the COMMON FORUM meeting 12 September, Stockholm**

## ***Introduction***

The COMMON FORUM discussed the draft of the Soil Framework Directive as revised by the Portuguese presidency. The document was received at the evening before the meeting and could not be studied intensively by those present at the meeting. The discussion focussed on the articles dealing with soil contamination. The meeting report does not necessarily reflect formal positions of the EU member states but is based on the contributions of the participants. Their points of view reflect their perceptions of the practical consequences of the presidency proposals for national policies and contaminated land management practices in their countries, which can be quite different, depending on the national situations. However, there are some “common ground” observations. These will be described below. The main conclusion was that the changes in the proposals of the EC introduced by the presidency are in the right direction, but add too many details to the directive in order to avoid problems as identified by COMMON FORUM, in previous discussion papers and COMMON FORUM suggestions for changes in the SFD articles (See 4<sup>th</sup> draft COMMON FORUM draft proposals). COMMON FORUM also concluded that the discussion in the Council of the EU would greatly improve if a thematic technical workshop could be organised to discuss certain issues in more detail and to make the ambitions of the directive clearer.

## ***General Observations:***

1] The SFD should fill the gaps between other EU regulations with consequences for national soil contamination policies. Historical soil pollution should be addressed to prevent complicating expansions of other directives in this area. The problem of dealing with unexcavated contaminated soil under the waste legislation was mentioned as an example.

2] The current SFD proposal leaves an important “gap” or “policy vacuum” for locally contaminated groundwater. If the soil is relatively clean (no significant risks for current or approved use of the land) there can still be a groundwater contamination plume. The risk of soil contamination FOR the groundwater may no longer be present, which implies that no further action is required according to the SFD. As the soil is not contaminated the situation will be not be part of the inventory, and the groundwater contamination will be ignored.

From the point of view of the Groundwater directive the plume may not significantly affect groundwater quality in a (large) groundwater body. The groundwater directive does not require action either in this case. Is this a desirable situation?

Another situation: Soil remediation takes away significant risks for human health and the environment. This means that soil related sources of groundwater contamination are “cleaned up” but the groundwater pollution itself may remain in place as the SFD only addresses soil. The Groundwater directive seems to imply that action for groundwater is only necessary if the local contamination is a threat for the good status of the whole groundwater body.

3] The proposal of the Presidency deleted the original article 4 of the commission proposals. This article describes a “duty of care” for soil for the user of the soil. The article 4 in this proposal is a redrafted article 9, which asks the member states to formulate policies for prevention of contamination. The original article 4 (duty of care) could be used by member states who want a stricter regime for new contamination, where new contamination (like a recent oil spill for example) is to be dealt with immediately (and not by using the identification approach described in article 10 and prioritising it in a remediation strategy together with historically contaminated sites) and cleaned up as far as possible (irrespective of landuse and related risks). The new contamination, which arose after soil contamination prevention regulations were in force, can be considered as negligence of the duty of care.

The stricter regime for new contamination, which is current practice in many member states, is still possible under the SFD as currently proposed, but some support for these national approaches in the SFD (via a “duty of care of the landuser” like the former article 4) would be appreciated by some countries.

4] The efficiency of the detailed procedure for the identification of contaminated sites can be questioned. It seems that a large effort is to be put in finding and assessing sites just to obtain a “national” list of contaminated sites. If the identification, the risk assessment and the timetable for the remediation could be organised as a simple continuous process, more effort and money could be devoted to remediation of really urgent situations as soon as they are identified.

5] Opinions about the Soil status report varied from “we don’t need it” to “very good idea”, but should not only be used when a contaminated site is sold. Information about soil is important when constructions or groundworks are planned that may turn a no risk site into a risky one, or at a start and end of an industrial activity where soil contamination may occur. It was also recognized that member states could ask for information about soil status when someone applies for a building permit or an environmental permit.

### ***Comments per article;***

#### **Article 10.**

The identification procedure avoids the monopoly position of chemical analysis in decision making by describing an almost complete protocol for assessment of sites where AnnexII activities are or have been taking place. The difficulties with Annex II, as pointed out by COMMON FORUM are not taken into consideration, and the use of other information (like contaminated groundwater or surface water) is not seen as an indicator for a contaminated site. As a protocol the article indeed reflect the tiered approach used in contaminated land risk assessment, which is an advantage. However many COMMON FORUM participants doubt whether the procedure should be described in so much detail in a framework directive. A technical guideline seems more appropriate. There are also concerns about the high costs of the identification procedure, only to obtain a list of contaminated sites.

To avoid the impressions that inventories can be complete the word “identified” or “known” could be added in paragraph 4 before “contaminated sites”.

The word “concentration” should be deleted in paragraph 2 c and 2d. From a scientific point of view a concentration of a chemical refers to chemicals in perfect solutions. Nothing is dissolved in soil. Chemicals are present in certain amounts in a volume or amount (dry weight) of soil. This is most adequately described by “level”. Moreover the more neutral word “level” also gives the possibility to take the bioavailability of the contaminant into account, and may also refer to “risk levels” when a risk assessment is performed.

## **Article 12**

The Soil status report avoids mandatory “concentration measurements” but adds many other requirements for information. Such a report may become quite costly, depending on the level of detail required. On the other hand the additional information may be a valuable contribution to the identification of contaminated sites.

The words “chemical” and “concentration” should be deleted. An assessment of the level of dangerous substances may be done by alternative methods like bioassays and/or by determining the risk in a simple risk assessment. It would be real disappointment if each introduction and use of an innovative method would require a change in the framework directive and a new co-decision procedure in EU.

## **Article 13**

Paragraph 2 mentions that remediation may consist of natural recovery. The traditional name of this process in Europe is still “natural attenuation” although in USA the wording “natural recovery” is increasingly used. To be appropriate as a technique for remediation the word “monitored” or “managed “ should be added. The sentence “It may consist of natural recovery” may also be deleted on the grounds that it mentions a specific technique which could be better described in a technical guidance document.

Adding the words “monitored” before “containment” and before “natural” obviates the need to request monitoring explicitly in article 14, which is about the remediation strategy, and not about remediation approaches.

## **Article 14**

The remediation strategy should be such that priority is given to the remediation of sites that pose a significant risk to human health. At first sight this seems a very defensible priority if applied to the current use of the site, but it may lead to strange results if this priority is applied for approved future uses. This would imply that the remediation of a contaminated site with acceptable risk for a current use like industrial, in order to create a residential area (high human health risk without remediation), would have priority over the redevelopment of a similar industrial site for nature development or a park. This way of priority setting may interfere with spatial planning decisions. Moreover as priorities are set in a remediation strategy for the national territory, it could imply that development of a park in one city is postponed because a residential area in another city is planned. Such unintended side effects of the human health priority should be avoided, either by:

-Deleting this priority and leaving priority setting to the member states,

Or

-Specifying that the human health priority only applies for the current use of the site in case the “temporary and urgent measures” mentioned in article 13 –1 are difficult to control and to maintain for longer periods of time in view of costs and technical limitations.

13-09-07 Dr, J.J. Vegter, COMMON FORUM secretary