

COMMON FORUM on Contaminated land in the European Union 16 & 17 October 2008 Toulouse

Meeting Report



21 October, 2008
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The Toulouse meeting was attended by:

Harald Kasamas (Austria)
Gundula Prokop (Austria)
Eddy van Dyck (Belgium)
Henri Halen (Belgium)
Marijke Cardon (Belgium)
Anna-MaijaPajukallio (Finland)
Fantine Lefèvre (France)
Laurent Michel (France)
Jean-Luc.Perrin (France)
Joerg Frauenstein(Germany)
Gabor Hasznos (Hungaria)
John O'Neil (Ireland)
Francesca Quercia (Italy)
Co Molenaar (Netherlands)
Margot Meijer (Netherlands)
Lucia Buvé (NICOLE)
Silje Aksnes Bratland (Norway)
Nicolae Heredea (Romania)
Johan Van Veen (Snowman)
Ana Alzola (Spain)
Eduard Marquez i Bagallo (Spain)
ChristophWenger (Switzerland)
Milan Sanka (Tsjechia)
Sheena Engineer (United Kingdom)
Andrew Holden (United Kingdom)
Dominique Darmendrail (COMMON FORUM)
Joop Vegter (COMMON FORUM)

MEETING REPORTING

Note: Handouts of all presentations from this meeting are available for download at www.commomforum.eu

Thursday 16 October

Session 1: Welcome Tour de Table

After the welcome and general meeting information by the secretariat the delegates introduced themselves during the Tour de Table. The COMMON FORUM also welcomed a number of new delegates from EU member states: Czech Republic, France, United Kingdom and Spain / Catalunya.

Session 2: Environmental Liability Directive Implementation

After the adoption of the Environmental Liability Directive at the European level in 2005, the situation for its transposition is very different from member state to member state. To fuel the discussion, Lucia Buve, NICOLE representative, has been invited to describe the situation (see handouts).

MS were required to have transposed the ELD into their national legislation by May 2007. In March 2008, only a few countries did it: Cyprus, Germany, Hungary, Italy Lithuania, Latvia, Malta, Romania, Slovakia, Spain, and Sweden. Others, like Poland, Belgium and Czech Republic, have implemented in part but not in full.

Details on the implementation in Spain, Belgium/Flanders and Belgium/Wallonia were also provided.

Discussions:

Since March 2008, several other MS have transposed the ELD:

- France,
- Netherlands,
- Czech Republic.

Other countries are still discussing how to transpose and implement the ELD (Austria, Belgium/Brussels, Finland, Ireland, United Kingdom). Italy should also review its national legal framework (1986 – Italian Environmental Damages Law) to match the Directive objectives.

Some additional legal or technical issues were also discussed during the session, such as:

- Technical criteria for defining new and historical damages: when the damage occurred? When the emission occurred?
- How to deal with gaps between dates for implementing ELD and national related laws (especially already existing ones).

Conclusions/ Follow-up:

To have a better idea of the situation of the technical and legal issues of the transposition of the Environmental Liability Directive in the European Member States, the following tasks have been agreed:

- elaboration of a questionnaire on ELD Implementation, by end of October, 2008,
- validation of the questionnaire, by end of November, 2008,
- answers from the CF Country representatives, by mid February
- Synthesis of the answers to be presented at the following CF meeting.

Session 3: Soil Protection Draft Directive

France as the current European Union Presidency presented the history of the examination of the European Commission Proposal for a Directive on Soil Protection, and the way of how to proceed after the blocked situation at the European Council of December 2007. Converging points and contentious issues have been identified. A new proposal taking these points into account (more flexibility, more pro-active, more focussed on solving the problem) has been elaborated by the French Presidency and send to the European Commission and the Member Stated mid September 2008.

A first working party at the European Council was organised on the 19th of September. The second one is planed for the 29th of October, 2008. The French Presidency is currently collecting all the remarks, comments, proposals in order to prepare this second WP and the elaboration of the second draft proposal.

Two sub-groups have been established for discussing the French proposal, in particular the proposed modifications for the contentious issues on Chapter III "Contamination". Short reports of the three working groups were given on the next morning of the COMMON FORUM meeting.

Field Trip

The field trip was introduced by a presentation of the remediation project undertaken by the TOTAL group on the AZF site, which has been devastated by an explosion on September 2001, 21st. Yannick CHARLOT, Deputy Head of the RETIA Company, project manager of the AZF remediation, explained the different phases of the project held between end of 2001 and June 2008. The site is currently under redevelopment for becoming in one part the National Cancer Research Center with some tertiary industrial activities, and in the other part a green area opened to public.

During the visit, additional details on this specific project were provided by Yannick Charlot and Christine Dachicourt, the Inspectorate in charge of the control of the site at the local authorities, the DRIRE Midi-Pyrénées.

Friday 17 October

Session 3: Soil Protection Draft Directive / Reports of the Working Groups

The reports made important recommendations to the French Presidency for elaborating the Chapter III – Contamination of the second draft proposal on Soil Protection. The general

impression is that the new proposal is going in the right direction and should be more efficient focusing on the problem treatment.

Main conclusions from the WG *discussions* were:

Basic Principles:

- All countries can fulfil the Draft Directive as newly proposed,
- The proposal is more focused in solving the problem instead of making an inventory (main objective of the December final proposal),
- Focusing on real problems by prioritizing actions is well perceived,
- Prevention and immediate reactions in case of serious risks are correctly addressed,
- Information of the public should be done. A passive procedure is proposed.
- These basic principles should be clearly identified at the beginning of Chapter III (article 10) and then detailed on some issues in the following articles.

Methodology:

- some clarification is needed on the scope of the National Strategy: Soil contamination (title) versus soil contaminated sites (indents). Issues on site boundary (diffuse pollution for example) or on “ongoing soil contamination (prevention failure).
- Methodology should help to determine whether a site is contaminated or not. The basic principles should be: risk assessment at endpoints, respect and consistent with individual MS approach,
- Land use is not the only driver. There is also a need for insuring the use of the collected data (updating of “inventories”).

Soil Status Report (SSR):

- it is an important tool,
- it is now flexible enough to make the national strategy applicable,
- it should be clearly connected to the National priority activities list as defined in relation with Annex II,
- its content should clearly mention soil quality state,
- it should be provided to the competent authorities for updating of the “inventories”, using a procedure to be defined,
- it should be valid for a certain number of years (to be defined).

Reporting: The current needs for reporting at the European level are seen as following:

- National list of activities covered by the transposition of the Directive,
- Evaluation of the national strategy
- Identification of new problems.

Annex II:

- it should be optional, to be considered as a starting point for countries discovering the Soil Contamination Problem.
- Currently, it's only focused on potential sources. It should be completed by proposed common technical criteria (i.e. size of the activity, use of chemical or processing techniques, duration of the activity, sensitivity of location, or existence of protective measures for soils ...) for deriving national list of activities covered by the Directive transposition.

Enforcement: Timetables and milestones are necessary for:

- elaborating and reporting on the National Strategy,
- establishing the list of activities covered by the Directive,
- periodic reporting to the Commission on the state of advancement of the National Strategy,

Needed modifications:

- additional needs for definitions: sensitive use,
- Chapter III cannot be considered in isolation. See Scope in Art. 1 (historic versus ongoing activities, old permitted sites).
- See the need of specifically referencing diffuse contamination,
- Article 10 is seen as a table of content of the National Strategy, but some items are missing (i.e. funding). Subsequent articles should follow in a logical sequence,
- The level of describing methodology for the National Strategy should be better explained.
- There is overlapping between article 10 and 12, that could be avoided,
- Article 14: make a clear difference between serious and other cases,
- Article 17: the compliance with the State Aid legislation should be checked,
- Clarification is needed on the use of policy / strategy / methodology wording.

There are still some **open questions** like:

- The integration with other European Directives, i.e. the ELD (how to manage the portfolio of contaminated sites? ELD should take care of the liability, not of the management of the sites)
- What is the burden of the Soil Status Report? Should it be applicable to individuals? Or just companies or developers?
- The information of the competent authorities on the results of the SSR could be mandatory (if no existing available data on the site), or on request (if existing previous data)

Session 4: IPPC Directive Recast & Soil related issues

A revision of the IPPC directive is currently discussed. The complete set of documents can be found at: <http://ec.europa.eu/environment/ippc/proposal.htm>. The general main points of discussion are on LCP, status of BREFs, and methodology for approving them and intervals between inspections. France has the intention to push forward as far as possible discussions during its EU Presidency. The inclusion of some soil protection related elements in IPPC is seen as a positive development. The introductory presentation by Marijke Cardon and Anna-Maija Pajukallio further explained the soil related issues, and in particular the points needing clarification or further discussion for agreement.

The soil related issues are contained in articles:

- 3 – definitions,
- 12 – basic obligations of the operator,
- 13 – Applications for permits,
- 14 – BAT reference documents,
- 15 – Permit Conditions,
- 17 – Monitoring Requirements,
- 23 – Site closure and remediation.

Discussion in Toulouse mainly focussed on the following issues:

- Prevention need:
 - There is no real improvement on this fundamental issue (i.e. BREFs on prevention),
- Baseline Report:
 - Necessary where applicable: how to define “applicable”? reference to art. 23?

- When should the initial state be determined? When authorizing the activity? At the update of the permit? If so, the old pollution should be taken into consideration under the Soil Protection Directive.
- Should be a risk based baseline!
- Remediation / Zero tolerance:
 - Remediation to the initial state as defined in the Baseline Report.
 - what is it in practical? How to take into account variations / uncertainties in sampling, assess, analysis? How to take into account the evolution of BREFs,
 - how to consider permitted emissions on old authorised installations?
 - How to determine a significant incremental?
 - How to move from absolute 'zero tolerance' to more pragmatic 'no added contamination' approach? Instead of 'significant pollution' use wording 'any pollution'?
- Monitoring issues:
 - Monitoring soil and groundwater is not efficient. For the IPPC objectives, it should be related to the integrity of the installations at the site plant. Then, if any problem is suspected, soil and groundwater quality should be monitored, and if necessary, restore according to media objectives.
 - Needs of BREFs documents for tackling monitoring issues.
 - The situation status should lead to actions.
- Site closure:
 - Art. 23.4 implies that all operators have to conduct a soil investigation at definitive cessation?
 - Starting a remediation at the closure time is not a good solution, especially in case of bankruptcy. Groundwater remediation usually needs several years of presence. There is a need for early warning and in some occasions early remediation.
- Contradictions/links with Soil Protection Directive:
 - IPPC refers to soil and groundwater, SPD to soil only (GW included in the definition of soil in IPPC),
 - SPD Annex II refers to IPPC Annex I, still in discussion
 - Baseline report versus Soil Status Report: content?
- Contradictions/links with the Water and Ground Water Directives:
 - Hazardous substances and priority substances in the WFD / GWDD, dangerous substances in the SPD
 - Operational monitoring of GW chemical status in WFD, versus monitoring IPPC installations.

There are still some **open questions** like:

- the IPPC directive is linked to the installations, and not the site surroundings.
- Some IPPC do not require a Baseline Report. A risk based approach is therefore implemented, creating some inconsistency in the legislation. This could have some consequences on insurance or financial guarantees.

The proposal is currently under discussion at the European Parliament level. There is a great variation in opinions. This can be followed on the Internet

(http://www.europarl.europa.eu/meetdocs/2004_2009/organes/envi/envi_20081104_1500.htm).

There is also a related IPPC Working Party planed on the 13th of November. Depending of the results of the discussions, the timetable for reaching the political agreement could be redefined.

Session 5: Waste & Waste from extractive industry Directives

The new Waste Directive will enter into force this year, with an expected transposition in national legislation before the end of 2010. The introductory presentation by Anna-Maija Pajukallio detailed the points related to soil issues. In particular:

- Unexcavated contaminated soil is excluded from the Waste Directive,
- Uncontaminated soil excavated and reused on the site is also excluded from the scope of the revised directive.
- By-products and End of Waste status procedures could be the best way to solve the problem for the other categories of soils.

The pending questions are:

- is excavated uncontaminated soil reused somewhere else than at the site considered as a waste? If so, is there a need for a permit or an authorisation for the reuse? Is there also a need for provisions on by-products or on the end of waste status as defined in the Waste Directive?
- Is there a danger that this will lead to unwanted harmonisation of uncontaminated soils using comitology procedures?

For the moment, please note that comitology procedures will only cover paper, sludges, ashes, compost, construction and demolition products.

In parallel, the Directive on wastes from extractive industry (2006/21/EC) is mentioning that criteria for defining an “inert waste” will be given in the comitology procedure. The draft proposal is based on “national threshold values for defining sites identified as not contaminated or relevant national background values”. This solution could be seen as an appropriate option for defining the end of waste status

Session 6: Research Issues

The presentation given by Johan Van Veen aimed at updating information on the Snowman consortium activities (see Internet website: <http://www.snowman-era.net>).

Three issues have been discussed:

- the invitation of Snowman Consortium to CF members to join them in the second call for proposal, established on three technical topics:
 - Regional management of contaminations
 - Integration of soil management into urban planning
 - Use of contaminated land for bio fuel crop production
 - The 18th of November, there is a meeting of the second call funders, open to new potential funders.
- the invitation of Snowman Consortium to CF members to join them in the future Snowman overall Snowman Research Programme (SNRP),
- the need for find a coordinator for a new dissemination project for applying the final call of the 7th Framework Program of the European Commission / DG Research.
 - At Consoil, Common Forum, Nicole and Snowman showed interest in a joint project on dissemination to be submitted in FP7
 - So far, Snowman could not find an organisation who is able and willing to coordinate the proposal (and if accepted, the project).
 - The organisation should be identified by the end of October for being on time for the deadline of the call for proposals.

Session 7: Other Issues, Closure of the meeting

The following CF secretariat issues were discussed during the Toulouse meeting:

- Funding of the secretariat:
 - Answers from several countries are missing
 - A new contract file has been established after comments received from Belgium and Switzerland.
- Updating of country representatives list:
 - Some European Countries are not present within the Common Forum.
 - A research of relevant contact points in some countries should be done (i.e. Poland, Bulgaria, Greece....).
- Updating of the CF Internet website:
 - BRGM is working on a new structure of the CF website.
 - New items will be informed: list of CF participants with their email address, information about CF meetings (agenda, report meeting, presentations).
 - All relevant documents from CARACAS and CLARINET projects will be transferred to the CF website.
- Updating of Caracas / Clarinet results on legal framework in European Countries:
 - Many countries are asking for current legal frameworks in European Countries.
 - A general questionnaire (with few items) will be elaborated and circulated for approval by the end of this year.
 - At the following meeting, a timetable for establishing Country datasheets will be discussed.
- Common meeting with NICOLE on legal issues:
 - General agreement on this NICOLE proposal.
 - Appropriate timetable should be discussed with NICOLE steering board.

The next meeting will be in spring 2009. Several location options should be analysed with the Country representatives (Ireland? Czech Republic? Or Austria). The following items were suggested for the agenda:

- country news: Romania, Belgium / Flanders on sediments issue
- ELD implementation: results of the comparison study,
- State Aids: new developments on contaminated land management funding?

Please already note that in Autumn 2009, it's a ICCL – CF combined meeting to be held in Finland.

Tasks List

Action	Responsible	Deadline
Environmental Liability Directive Implementation: Validated Questionnaire Answers	DD CF Members	End Nov Mid Feb
Secretariat funding : Answers from Austria, Germany, UK	CF country members	Nov 08
Location of the following meeting	Ireland ? Czech Republic ? Austria ?	Mid Dec 08