

**COMMON FORUM on Contaminated land
In the European Union
26 & 27 March 2009
Dublin, Ireland**

Meeting Report



The Dublin meeting was attended by:

Harald Kasamas (Austria)
Gundula Prokop (Austria)
Eddy van Dyck (Belgium)
Marijke Cardon (Belgium)
Anna-Maija Pajukallio (Finland)
Fantine Lefèvre (France)
Jean-Luc Perrin (France)
Joerg Frauenstein (Germany)
Gabor Hasznos (Hungaria)
John O'Neil (Ireland)
Gerry Stanley (Ireland)
Eibhlin Doyle (Ireland)
Aoife Shields (Ireland)
Pat Fenton (Ireland)
David Moore (Ireland)
Brendan O'Neill (Ireland)
Nuala Bannon (Ireland)
Alice Wemaere (Ireland)
Francesca Quercia (Italy)
Co Molenaar (Netherlands)
Margot Meijer (Netherlands)
Anja Sinke (NICOLE)
Silje Aksnes Bratland (Norway)
Ana Alzola (Spain)
Erika Skogsjo (Sweden)
Christoph Wenger (Switzerland)
Pavla Kacabova (Tsjechia)
Milan Sanka (Tsjechia)
Tom Coles (United Kingdom)
Sheena Engineer (United Kingdom)
Andrew Holden (United Kingdom)
Dominique Darmendrail (COMMON FORUM)
Joop Vegter (COMMON FORUM)
Paul Nathanail (CABERNET)

2 April, 2009

Dr. Dominique Darmendrail & Dr Joop Vegter

MEETING REPORTING

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

Thursday 26 March

Session 1A: Welcome Tour de Table

- **Welcome:**

The meeting was introduced by Michael KITT, Minister of State at the Department of the Environment, Heritage and Local Government. The importance of the open discussion between experts from Member States and the work done within the Common Forum, in particular on policy and legislation on environmental protection was highlighted.

- **Member news:**

Eduard Marquez, From Catalonia (Spain), informed us recently of the decision on their contribution to several European Groups and Networks, and in particular of their departure of the Common Forum network and thanks CF and their members for the work done for being a reference on the soil protection field. Despite this decision, they could still consider to host a meeting in Catalunya.

Henri Halen, From Belgium/ Wallonia, is leaving the SPAQUE and therefore will be replaced by a new Wallonian representative in the following meetings.

- **Country tour de table:**

- Finland:

The new Waste Directive (to be implemented at national level before end of 2010) addresses excavated / contaminated soils. Several technical issues rose around the status of excavated uncontaminated soil used elsewhere:

- i) It could be in principal waste (Permit or simplified notification is then needed for reuse) or not (need for defining the waste status).
- ii) Certain specified waste shall cease to be waste when it has undergone a recovery, including recycling, operation and complies with specific criteria.
- iii) The criteria for end of waste are defined in the Directive. The criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental effects of the substance or object.
- iv) JRC has produced a report for the Commission about the methodology (<http://susproc.jrc.ec.europa.eu/activities/waste/documents/Endofwastecriteriafinal.pdf>).

- v) Soil is briefly mentioned in the report (pilot-study aggregates in connection with construction and demolition wastes).

Finland would like to know:

- How MS will implement the new Waste Framework Directive in connection with excavated uncontaminated soils? Is there any change for current practices?
- Is there a danger that this will lead to unwanted harmonised values (for defining uncontaminated soil)?

Several countries have the same concern. France announced a special session on this issue at the “Assises Nationales des Déchets”, in October 2009.

- Austria :

The Contaminated Land management regime has been changed last year. There is a new regime for new polluted sites. A specific study has been conducted for setting this new regime that includes 7 different issues of concern.

- England & Wales:

DEFRA have provided further guidance on the legal definition of contaminated land under Part 2A of the Environmental Protection Act 1990 in England.

<http://www.defra.gov.uk/environment/land/contaminated/index.htm>

To support this the Environment Agency (England and Wales) have published new guidance on the approach for human health risk assessment. New CLEA software has also been published to allow assessors to develop their own assessment criteria for human health. Guidance and software can be found on the Environment Agency's website at: www.environment-agency.gov.uk/CLEA.

The Environment Agency has also recently published a report on Dealing with Contaminated Land in England and Wales. The report reflects progress using the Part 2A regime and can be found at: www.environment-agency.gov.uk/landcontamination

- Germany:

The Federal Soil Act has been amended, especially on two issues:

- i) More substances to be assessed for Human Health and Groundwater,
- ii) New ordinance of reuse of materials for construction and filling-up materials.

- Czechia:

The Soil Act has been amended, in particular on:

- i) investor obligations for reuse of soils or construction works,
- ii) reuse on agricultural soils.

- Belgium:

There are regional elections in Belgium in June.

Therefore, in Flanders, OVAM is working on a new strategy for waste and soils to be presented to the new authorities. Some issues are highlighted: i) alternative solutions for Brownfield reclamation, ii) alternative financial instrument to give more support to companies and municipalities, iii) specific programs for schools and for former gasworks, iv) management of sites with rest contamination,

Wallonia and Brussels have recently adopted their legislation on soil protection. Therefore the three Belgian regions have now soil legislation..

Session 2: Environmental Liability Directive Implementation

As discussed in Toulouse in October 2008, the situation for its transposition is very different from member state to member state. 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, a questionnaire has been sent to CF country representatives to have a description of the situation in their Country.

A synthesis has been done and presented at Dublin meeting (for details see handouts).

| Country | Date of transposition | Liability regime | Damage To water | Damage to soil | Damage To bio-diversity | Permit defence | State of Art Defence | Direct legal Action | New vs historical pollution |
|---------|-----------------------|------------------|-----------------|----------------|-------------------------|----------------|----------------------|---------------------|-----------------------------|
| Be/FI | 21/12/07 | = | = | + | + | + | + | = | = |
| Be/Wal | 22/11/07 | = | = | = | = | = | = | = | = |
| Czechia | 19/05/08 | = | = | = | = | = | = | = | = |
| England | 29/01/09 | = | = | = | = | = | = | = | = |
| Germany | 14/11/07 | = | = | = | = | + | + | = | = |
| Hungary | 30/04/07 | = | = | = | = | + | | | + |
| Ireland | 01/04/09 | = | = | = | = | = | = | = | = |
| Italy | 2006 | + | + | = | + | = | = | = | + |
| Lux | 03/09 | = | = | + | + | + | = | = | = |
| NL | 04/04/08 | = | = | = | = | + | + | + | = |
| Spain | 2007 | = | = | = | + | = | = | + | = |
| Sweden | 01/08/07 | + | = | = | = | + | + | = | = |

= / same as in the European Directive

+ / More stringent at National level

General issues discussed:

1] A question was raised concerning "permit defence". Permit defence means that one is not liable for environmental damages if one has an environmental permit. In general this is not accepted as a valid defence. Depending on the permit one may not be liable for adverse effects of normal operations. But it is unlikely that these would be defined as "damage". It is also difficult to imagine that a competent authority would issue permits that allow environmental damage to occur.

2] In practice several liability regimes for soil damage go beyond human health only and cover ecological and water aspects. This can be done in different ways:

- Adding ecosystem health to human health in a national regulation based on ELD (see Luxembourg)
- Other national laws already lead to liabilities for ecological soil damages (see NL and England)
- Regional laws may be stricter than the national transposition of ELD (Germany, Italy)

Actually an overview of the liabilities concerning soil damage, which apply in practice in every country, is more informative than a review of the ELD transposition itself. The ELD is a "minimum" requirement and does not replace existing liability regulations that go beyond this minimum.

3] Why is ELD comparison useful for NICOLE and for COMMON FORUM?

For industry it is interesting to know which liabilities exist in different countries, both ELD and additional ones. For COMMON FORUM members it is interesting to exchange experiences concerning the different regimes and different ways for implementation of ELD (How to fit in ELD requirements in national or regional regulations).

Additional information was given during the meeting on **three other countries**:

- Austria: Has received an EC reminder. Has been agreed by 9 regions. Still in discussion.
- Finland: Just voted by the Parliament, by integration to the National Soil reclamation Act. More stringent than the European Directive. The form will be answered in the following weeks.
- France: Law voted last summer. Decree précising the details for implementation still in discussion. The form will be answered in the following weeks.

Conclusions/ Follow-up:

To make a real comparison of the conditions of implementation of the Environmental Liability Directive in the Member States, some additional information is needed:

1. CF members will refine the answers to the questionnaire;
2. Case studies are necessary to illustrate the differences between countries in practice, 2 cases are considered necessary (1 – Oil spill to be defined by NICOLE, 2 – Historical pollution / Italian Case currently under judgment at the European Court of Justice, to be defined by Francesca).
3. The ELD questionnaire (and answers) will be put on the CF website, when validated by country representatives with a link to the legal source in the country concerned.
4. Additional publication is welcome by CF Members.

Session 2: Mining Impact activities

A presentation of the Irish approach for characterising historic mine sites and their environmental risks started this session (See Handouts – Gerry Stanley's presentation). An Irish historic mine site inventory has been set up and a risk ranking system (HMS - based on a conceptual model) has been developed to prioritise actions on sites.

Five groups of sites are therefore identified.

| Group | Score | Group definition |
|--------------|---------------|---|
| I | >2,000 | Sites which should have a full risk assessment carried out. |
| II | 1,000 – 2,000 | Sites requiring general monitoring of most or all waste piles, discharges or stream sediments on an annual basis. |
| III | 300 – 1,000 | Sites requiring general monitoring of most or all waste piles, discharges or stream sediments on a biannual basis. |
| IV | 100 – 300 | Sites requiring specific monitoring on particular waste piles, discharges or stream sediments on a five yearly basis. |

| | | |
|---|------|---|
| V | <100 | Site not requiring any specific monitoring. |
|---|------|---|

General issues discussed:

1] How to transpose the environmental impact part of the European Directive on the management of waste from extractive industries (2006/21/EC) was discussed. There is no protocol/rule given at the European Level.

2] The Irish ranking system is a site specific risk score. Up to now there is no aggregation of risks at a watershed scale, but this will be done in the future for quarry districts.

Situation in other European Countries:

FRANCE: French approach is based on: i) a systematic search for sites with a “serious negative environmental impact or a potential of becoming in the short or medium term leading to serious threat to human health or the environment (existing databases), ii) a remediation adapted to the effective impact of the site on its environment, and on the present and future land uses (through a strategy of prioritisation).

For orphan mines, safety and security devices have been transferred to a specific unit of BRGM (Mining security and prevention unit).

There is still an open technical question: how to conduct a clever and useful risk analysis for closed mines?

GERMANY has a similar experience, in particular for lignite mines. A presentation will be given at the following CF meeting in Helsinki (Finland).

Session 3: Field Trip

The field trip to the Avoca Mine site was introduced by a presentation of Eibhlin Doyle.

The Health, Safety, Environmental and Heritage issues at the site were presented.

The Irish Geological Survey is currently preparing a realistic, cost-effective and achievable integrated management plan for the District.

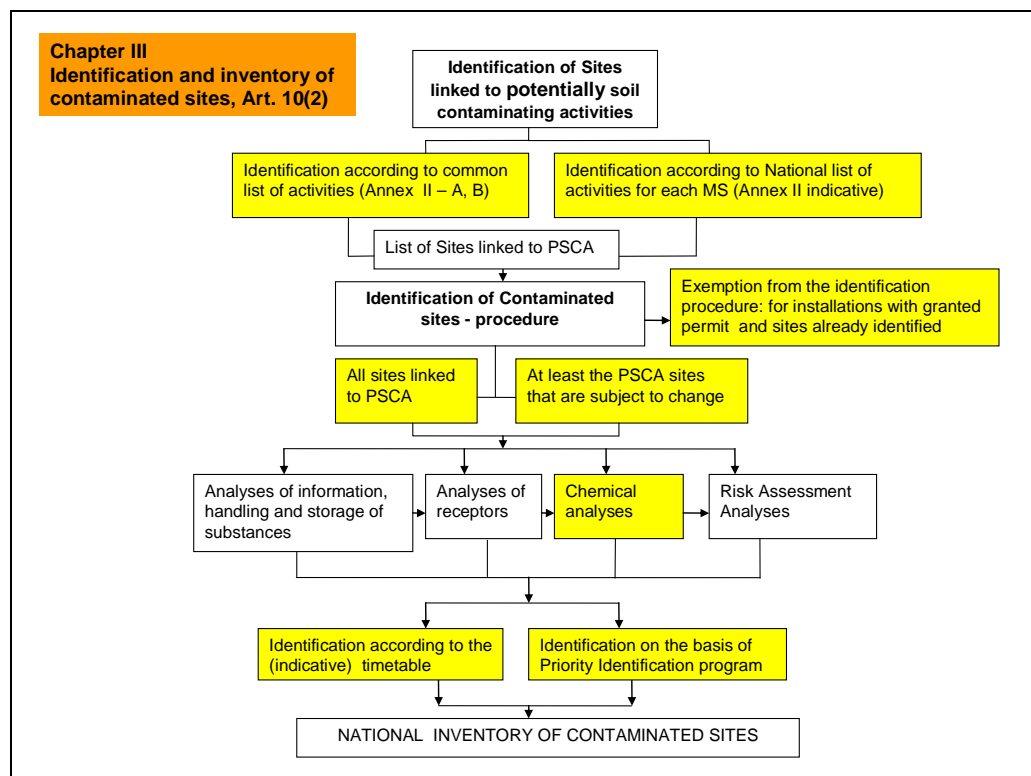
Friday 27 March 2009

Session 4: Soil Protection Draft Directive

The soil Protection discussions were introduced by presentations from:

- Aoife Shields (Ireland) on recent EC Developments and Management of Contaminated Soil in Ireland ;
- Milan Sanka (Czechia) on the new draft of Chapter III – Contamination taking into consideration the remarks received during the last Working Party in Brussels ;
- Erika Skogsjo (Sweden) on the Soil Framework Directive from a Swedish point of view ;
- Jean-Luc Perrin (France) on the IPPC recast and the soil related issues.

Following the proposal of the Czech representatives, several issues have been discussed in Dublin, around the dilemmas highlighted in yellow in the following flowchart.



1) Art 10 – identification and inventory

1.1. *Appendix II:*

This appendix is now indicative.

>> Agreement of the participants.

1.2. *All sites vs sites subject to change:*

CZECHIA proposal:

- 1) Already resolved in the last working party. Currently ALL sites linked to Appendix II activities are included.
- 2) The tiered approach, seen as a monorail approach, (as detailed in the following sub-chapters of Art. 10) leads to sieve sites out.

In practice there are **two tracks** – sites under redevelopment (planners set the priorities) and ongoing use/ abandoned sites which pose risk (public intervention, inventorised and prioritised on basis of risk).

In practice the two Tracks seem to require remediation at DIFFERENT LEVELS OF RISK. A developer addresses the risk in view of future use, whereas public intervention will concentrate on those sites which are dangerous in view of their current use. This distinction is of course less relevant if the public authorities are also the “developers”

Questions discussed:

- is there a real need of inventory of the sites under redevelopment?
 - They should be out of this identification task. But due to this late stage of discussion in the Directive Drafting, this track for identifying sites should be left out ;
 - These sites should be taken into consideration earlier on (Prioritisation Action Programmes) to have a safe way of prioritisation

- France still has doubts at this point and <unspecified> changes are required. We share the doubt about the safety of our <current> prioritisation.
- Is the tiered approach sufficiently well described to make sure that the focus is on sites likely to be posing a problem (need to eliminate MOST sites as early as possible):
 - The Current text does that pretty well (UK, Austria, NL, ...).

Conclusions: as the annex II is indicative and the identification process rather flexible, it is not that problematic.

1.3. Timetable for setting the national inventories

Czechia proposal: dead-line (absolute) is 25 years (after the date of entry in force), but the interim milestones are indicative.

Questions discussed:

- 25 years is a big problem for many MSs in connection with para (5). The timetable interferes with prioritisation.
 - Some possibility to derogation could be needed.
- Inventories should be living. Therefore the percentages do not mean anything.
 - There is too much effort on the identification phase and not enough on priority list sites.
 - The current proposal doesn't allow it.
- Which obligatory deadline is required?
 - You could have an obligatory deadline for a National Plan – which must include a binding timetable for implementation.
 - This could be solved by proposing progress reports after XXX years (15 years as proposed by Flanders!). These could be mandatory control points.
- Prioritisation programme : prioritization is not in a good place, to put it before identification procedure (in connection of land change use [in para 2(b)], could be better
 - **Written comment from France and UK is expected.**
- The consistency with the ELD should be checked. One mechanism is missing – namely, identification by the operator. This can be an additional driver for listing on the inventory. Of course this would only apply to recent contamination. We need consistency between directives and coherence.

Conclusions:

- Time tables are needed in such Directive, to insure that something will happen in each Member State.
- 25 years could be seen as a final timetable even very long one.
- Intermediate timetables as proposed for the moment are a big problem for big countries due to the scale of the task, especially if you have to consider you may not even have a Risk Assessment process in place.
- The proposal to review goals was supported (cf. progress reports alternative solution).
- The purpose of prioritization programme (para 5) was not quite clear. To put prioritization before the identification steps and connect it with land-use (filters) was proposed.

1.4. Tiered approach / Use of Chemical Analysis

CZECHIA : step (iii) in investigation process has options that can be freely chosen – first option highlights the chemical analysis and the second common risk assessment management

Questions discussed:

- The whole process should be a site specific risk assessment.
 - The Current text allows enough flexibility.
 - Test for moving to point 3, requires a *significant* possibility.
 - Most CF experts can live with it but it could be clarified (exit points, tiered approach, specific procedure ...).
- What media should this be applied to? No detailed specification is required to allow flexibility (should be in relation with site conceptual model).
- Sites that should be out: those under current planning permit if the soil related issues are addressed.

Conclusions:

The stepwise identification procedure is flexible, but there is some lack of clarity and also a danger of misuse and interpretations exists. Risk assessments are always site-specific. The tiered approach could be emphasized .

2) Art 12 – Soil Status Report (SSR)

CZECHIA: Is a Common Minimum Content needed? This transparency could be of benefit by being able to share information (exchangeable and comparable between MS). EC requested a specification of a common minimum content to avoid that some MS may only include cadastral information.

Questions discussed:

- Common Minimum Content: for most of the CF experts, this is not needed.
 - Would informative annex be helpful? No.
- There is a need for consistency in identification of sites, not for sharing this level of information.
- It could be especially needed if applied to citizens/householders (to ensure safety prioritisation). But the way of doing it should be creative (i.e. living area report).
- There might already be a soil status report, if you have a house on a historic site. One report is enough.
- There are different kinds of SSRs. There is a need of consistency with the IPPC revision (baseline report). This is not a problem. You do not need to do it twice.
- The report should also specify what if the site has already been remediated.
- Energy ranking is now compulsory and may be we can expand that concept into Environmental Screening prior to sale.
- If land use on the site is restricted/limited, then such constraints can be included in the soil status report <i.e. include covenants or 'salvitudes'>.

Conclusions:

CF members stated that a SSR is required, but the wording should leave it to the MS about what to include in it. The content of baseline should be left to MSs and this should be better expressed in text (like change of word 'shall' to 'may'). SSRs can be used "creatively" .Timing problem needs to be tackled.

3) Art 13 – Remediation

Questions discussed:

- Discussion around Natural recovery: this need monitoring. Control is probably not sufficient. It does not allow 'do nothing' to be an option.
- The consistency between Art. 13 and chapter 4 is needed (13(2) allows NA, only 13(4) requires monitoring => should be combined).

Conclusions:

CF members agreed with the proposed definition. It is taken from the ELD.

Session 5: Research Issues

Two separated issues were discussed during this session.

1] EURODEMO+ demand (Gundula Prokop, Anja Sinke):

The FP6 EURODEMO project showed that there is a lack of knowledge and confidence in innovative soil and groundwater remediation solutions and that there is a need to provide comprehensive information on demonstration projects in Europe.

There is currently an European Initiative for creating a Network of National / Regional Demonstration Platforms (so called EURODEMO+, including partners from Austria, Czech Republic, France, Hungary, Italy and UK) *"to increase the demonstration and implementation of cost-effective and eco-efficient remediation technologies on national/regional scales, based upon national/regional needs, with pan-European support, in order to enhance and harmonize "good quality" demonstration practice on European scale."*

At the moment, there is no possibility of EU funding for such initiative. Therefore the question of a Joint Position Paper (from Common Forum, Nicole and Eurodemo+ network) for supporting application of remediation technologies rose from CONSOIL discussions.

Conclusions/ Follow-up:

- a core group of CF members will contribute to the drafting of a first version of the Joint Position Paper, with NICOLE and EURODEMO+ representatives,
- the draft paper will be distributed to the Whole Common Forum for formal agreement on:
 - a) having such Joint Position Paper on this issue,
 - b) the content of the JPP (action plan, repository / database, research of funding, training / education),
 - c) the dissemination plan, DG Environment and Research being identified as the main clients (but not the only ones).

2] New UK Development of screening levels / experiences of a collaborative approach (Paul Nathanail):

There has been a recent review of the regulatory approach on human health risks from contaminated land management. The Environment Agency has reviewed and published several important guidance documents (Contaminated Land Exposure Assessment technical guidance, Human Health toxicological assessment of contaminants in soils, updated of the technical background of the CLEA Model, review of some input parameters – body weight and height, and the publication of new CLEA software).

A participative workshop with local authority regulators and practitioners to assess 70 substances has been organized at the Nottingham University using the Environment Agency's reviewed framework, in order to develop human health screening values for where the Environment Agency has not published Soil Guideline values. The final report is expected for end of the month.

Environment Agency is due to start to publish Tox and SGV substance reports by the end of March 2009.

Session 6: Secretariat Issues, Closure of the meeting

Several issues of concern for the secretariat task have been quickly presented:

- the organisation of the ICCL meeting in Helsinki (Finland), the 16 & 17th of September, 2009, with a coupled additional day for CF meeting,
 - o Austria, Netherlands, Italy and Australia would like to have a timeslot for presenting the evolution in their country during the Session A.
- the update of country representatives to enlarge the network,
- the update of the Common Forum website, with the first report on visits (number, origin, pages of interest),
- the timetable for the ongoing activities:
 - o update of the CARACAS / CLARINET documents on legal framework in Member States (questionnaire under review),
 - o demands from EURODEMO+ (see below) and HERACLES (common ground for risk assessment use – meeting next week)
 - o exchange with NICOLE Steering Board on potential common actions (i.e. common workshop on legal/regulatory issues in Spring 2010) or CF demands.

Tasks List

| Action | Responsible | Deadline |
|---|--|----------------|
| Revision of ELD comparison study : <ul style="list-style-type: none"> - elaboration of case studies - review of country answers (precision and case studies answers) - review of the synthesis | Sinke / Quercia All country rep. | 30/04 01/06 |
| | Buvé/Sinke/DD | 01/09 |
| Synthesis of Soil Protection discussion results on the basis of CF member notes and diffusion to Czech Presidency and CF members | DD | Next week |
| Contribution to other networks demands: <ul style="list-style-type: none"> - EURODEMO / Drafting of Join Position Paper - Heracles / discussion on demands and preparation of the Helsinki Special Session - Nicole / Participation to the May Steering Board Meeting | DD/Vegter/Quercia DD/Vegter/Kasamas | April June |
| | DD | May |