



EU FORUM OF JUDGES FOR THE ENVIRONMENT  
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

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## SOIL POLLUTION QUESTIONNAIRE

The aim of this questionnaire is to find out, through case studies, the way in which each member (or future member state) is dealing with the problem of soil pollution in order to identify a possible common pattern of difficulties and to specify what could be the contribution and limits of EU legislation, namely the relevancy of the Directive Proposal of 22 September 2006 setting out a framework for soil protection and amending Directive 2004/35/EC.

### I- Information on polluted soils :

1. Do you have a national inventory (or inventories) of polluted or contaminated soils?

*According to Section 2 (b) of Act No.220/2004 Coll. on Soil protection the territory of Slovak republic is divided into agricultural soil and non-agricultural soil. For the purposes of above mentioned Act the term non-agricultural soil means any soil that is not useable for agricultural activities especially it covers timberland (forest land) and building plots, it means plots (parcels) which are built over by houses or other buildings or are prepared for such activities according final planning licence.*

*Firstly, there is an unofficial national inventory of polluted or contaminated soils in Slovak republic which has been developed by the Soil Science and Conversation Research Institute.*

*Secondly, there is an official national inventory performed by The Geodesy, Cartography and Cadastre Authority of the Slovak Republic. It is a central body of the state administration for geodesy, cartography and cadastre of real estates. In order to fulfil entrusted tasks the Authority has established Geodetic and Cartographic Institute Bratislava, Cadastral Institute in Zilina and Research Institute of Geodesy and Cartography in Bratislava, which are within Slovakia-wide scope.*

*The Authority directly controls the local authorities of national administration in the field of geodesy, cartography and cadastre of real estates - cadastral offices (8), which perform the national administration in the wards of regions, and cadastral registries (72), which perform national administration in the wards of districts.*

*Cadastral registries in particular provides the incorporation, evaluation, documentation, archiving and opening to public of the results of selected geodetic and cartographic activities, especially to designate various plots by identification of nature soil, for example gardens, fields, forest glade as well*

as meadows, grass-land or courtyard. The identification is binding for anyone and agricultural soil is composed from soil which is listed in cadastral registry and is designated as arable land, hop-fields, vineyards, fruit groves, gardens and permanent grass stands.

1. Who is in charge of it: local, central authorities, professional bodies?

*The Soil Science and Conversation Research Institute (hereinafter "SSCRI") is responsible for step by step creation of national inventory of polluted or contaminated soils in Slovak republic. This state contributory body researches, identifies, evaluates productional and other than productional functions of soil and its rational use.*

*The SSCRI activities can be identified as follows:*

**Scientific activities**

- *scientific activities with the aim on soil of the Slovak Republic*
- *participation on the international projects, especially EU projects*
- *participation on the activities of the Joint Research Center (JRC Ispra)*
  - *improvement of the soil monitoring system*
  - *development of the knowledge in the area of productional and other than productional soil functions*
  - *identification, mapping and development of the complex soil utilities in the Slovak Republic*
    - *development and maintenance of database components of an informational system on soil related to expert systems to degradation and use of soil*
    - *development of methods on sludge usage and its natural elimination*
    - *scientific modeling of climate changes impact on the soil cover*
    - *impact modeling of agricultural soil use in processes of integrated sink enhancement assessment*

**Expert activities**

- *activities from the Government resolutions*
- *activities in accordance with the legislation*
- *activities executed for the Ministry of Agriculture of the Slovak Republic (MoA)*
  - *expert activities to meet the needs of the sector*

*As was once said above the Geodesy, Cartography and Cadastre Authority of the Slovak Republic is another central body of the state administration for geodesy, cartography and cadastre of real estates.*

2. What are the criteria: soil composition, prior or present use, ownership, depollution in progress, planned use...?

*The main criteria of listing soil into national inventory by the Soil Science and Conversation Research Institute are as follows:*

- *wind and water erosion*
- *excessive compaction*
- *negative balance of organic matter*
- *contamination*

According Article 2 (g) of Act No. 220/2004 Coll. on Soil Protection for the purposes of the Act degradation of soil means any injury or deterioration of soil by way of physical, chemical or biological influence as wind or water erosion, excessive compaction, acidification, contamination by risk-bearing substances, dangerous plants (e.g. weed), animal organisms or microorganisms as well as increasing an content of humus elements in soil.

### **Complex Soil Survey of Agricultural Soils of Slovakia (KPP database)**

In Slovakia, the **Complex Survey of agricultural Soils - KPP** is the basic source of data on soils/soil cover for the agricultural land.

The KPP survey resulted in a huge research material collected and archived in the analogue form. The graphical set of survey results is represented by **operate maps** (scale 1:5 000 and 1:10 000). During the survey, the operate maps had been used to record the localisation of survey pits (soil profiles) and to delineate the borders of the soil units regions (soil taxonomic units, soil textural units, surface stoniness and waterlogging).

The survey reports represent the text block coupled to operate maps. The survey reports are related to an individual agricultural subject area (cooperative farm, state enterprise, individual farmer) representing the KPP survey unit. Besides general description of the area surveyed (natural conditions, agricultural characterization, etc.) the survey reports contain attribute data on soil profiles:

- morphological description of soil profile and selected analytical properties (for topsoil and subsoil) of nearly 180 000 soil profiles (so-called **basic soil profiles - BP**)
- morphological description of soil profile and selected physical and chemical properties (for all genetic horizons) of nearly 18 000 soil profiles (so-called **selected soil profiles – SP**, included in KPP-DB v. 1.0)

### 3. Who has the access to it? Is it a data base?

The access to some general information is free for anyone and by way of internet address: <http://www.vupu.sk/index.htm> . But access to a group of specialised data and information is blocked and every person will have to send an application to obtain approval for individual access.

Students (internal, external of the bachelor and master education programme, as well doctor programs) are allowed to get access to additional data from the informational system of SSCRI. However, the additional data will be supplied only after **personal consultation** with responsible personnel at the SSCRI. Beyond, this will be done only in **justified cases**. When accepted by the authorised personnel, students will get the information after a written application confirmed by a stamp of educational institution and instructor's signature, as well as declaration on oath signed by the student.

4. What is your view on this source of information? What changes, amendments would you like to be made?

*From the point of my view it is very important source of data and information for anyone who is keen in environmental protection. But it is so fresh knowledge for me and I am not therefore able to evaluate the bad character of the site and propose some changes or other development.*

2. Are there any particular administrative or legal requirements to provide information?

*There has been no obligation of anyone to inform, provide information or notify the Soil Science and Conversation Research Institute till 2007 year that the degradation of soil has started to threaten or already existed. But new Act on Prevention and Remedy of Environmental Damage laid down that any provider has obligation to inform state authority especially if a soil is threatened by environmental damage.*

1. In which cases (sale, change of activity, etc.)?

*The second case of information obligation is notification of change of soil nature to cadastral registry.*

2. To whom (public authority, private buyer, etc.)?

*From above mentioned produced answers stemmed that they are state authorities.*

3. What, if any, are the legal sanctions in case of non observation of the requirement to inform? (specific sanctions such as: closure of the site, cancellation of sale, mandatory rehabilitation of the soil or general sanctions pertaining to common liability regulation)

*Sanctions should be imposed by the state authorities to owners or landlords using soil as well as any wrongdoers only they find out degradation of soil and who is responsible for such situation. State bodies must perform overview, monitoring, inspection and other supervisory activities and results which were obtained during these activities must evaluate. The Ministry of agricultural and its lower bodies can lay down only pecuniary sanctions but Ministry of Construction is granted to power to close any building site established on soil which is directly determined for agricultural purposes (agricultural soil).*

4. What is the proportion of claims pertaining to the lack of information? (Please give examples).

*We are apologizing but due to previous answers it should not be given examples.*

## **II- National legislation on soil pollution and enforcement**

### **A- Does specific legislation exist on the subject of polluted soils?**

1. *Act No. 220/2004 Coll. on Soil Protection – it is a very brief legal binding measure, which stipulated basic legal terms (agricultural soil, contamination of soil) and structure as well as competence of central and local state authorities.*
2. *Act No. 543/2002 Coll. on Countryside Protection*
3. *Act No. 332/1996 Coll. on Viniculture and Vineyards*
4. *Act No. 326/2005 Coll. on Forests Protection*
5. *Act No. 539/2007 Coll. on Prevention and Remedy of Environmental Damage*
6. *Act No. 300/2007 Coll. Criminal Code*
7. *Act No. 40/1964 Coll. Civil Code – it contains provisions concerning neighbours relationships and injunction to interfere such relationships by emissions of smoke, dust, noise or other substances which are awkward them; and great number of ministerial decrees.*

1- What kind of legislation: civil, public or criminal law?

*public:*

1. *Act No. 220/2004 Coll. on Soil Protection*
2. *Act No. 543/2002 Coll. on Countryside Protection*
3. *Act No. 332/1996 Coll. on Viniculture and Vineyards*
4. *Act No. 326/2005 Coll. on Forests Protection*
5. *Act No. 539/2007 Coll. on Prevention and Remedy of Environmental Damage*

*criminal:*

6. *Act No. 300/2007 Coll. Criminal Code*

*civil:*

7. *Act No. 40/1964 Coll. Civil Code*

- 2- Have the provisions of *directive 2004/35/CE on compensation for damage to soil* (contamination) been implemented in your national law and how?

*According information given me from Ministry of agricultural provisions of the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage was implemented in due manner by Act No. 359/2007 Coll. on Prevention and Remedy of Environmental Damage.*

- B- Is there any specialized personnel to check the degree of respect of the regulations on polluted soil?

*Above mentioned Soil Science and Conversation Research Institute disposes by qualified experts and laboratories for performing specialised search of soiled. They are able to identify the main polluters in Slovak republic (nuclear power plants, pipelines, refineries or chemical producers) and step by step approach to make check activities in relation to soil in these areas.*

- C- Does the soil pollution fall under any other legal disposition, or other specific sector of environment regulation? (for example: water regulations, waste, industrial facilities, town planning, etc.)

*In general it should say the legal frame relating to soil protection is very varied and complex. But the main player in soil protection is Ministry of agricultural and lower state authorities (regional soil authorities). On the other hand for example Ministry of Construction plays very important during expropriation or separation procedure concerning soil originally for agricultural purposes. Also Ministry of Environment is responsible for soil protection which is situated in Protected Areas.*

- D- Generally speaking, do you feel that rules on soil pollution are effectively applied and efficient?

*It is very hard to say whether the rules on soil pollution (up to me better term is protection) are used in effective manner or not. But I can approve with general opinion that level of environment on the present is very bad and needs to help by any means and of course by way of effective rules. For example I was in negative manner surprised by news that anyone had no duty to inform soil state authority on degradation level of his/her soil in Slovak Republic and the main protection tool is only waiting for inspectors' visits till this year. Since*

2008 this situation radically changed under influence of Act on Prevention and Remedy of Environmental Damage.

- E- And if not, please explain what are the main reasons in your view? (too complex, few and far between, unknown, unsuited, lack of means, etc.)

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- F- How would you evaluate your country's legislation on the subject?

*If I have a respect to my above mentioned notes the Slovak's legislation belongs to group of middle level protection of soil.*

### III- Soil pollution and liability

- A- What is the proportion of soil pollution claims on environmental law suits pertaining to environmental issues?

*The Slovak Supreme Court has not still decided any suit concerning soil pollution agenda. We have no relevant information what part of environmental cases is generated by cases filed by courts from reasons soil protection. We may only guess that it is less than 5 %.*

- B- What are the types of liability: subjective liability - polluter pays, establishment fault, or objective liability - mere ownership or occupancy?

*The main principle is – polluter pays, and is based on objective liability. But before a state authority would lay down sanction it gives adequate time space in order to restore into previous stage. If wrongdoer denies to do so, sanctions should be imposed by the state authorities to owners or landlords (occupancy) using soil as well as any wrongdoers only they find out degradation of soil and who is responsible for such situation. The Ministry of agricultural and its lower bodies can lay down only pecuniary sanctions but Ministry of Construction is granted to power to closed any building site established on soil which is directly determined for agricultural purposes.*

C- Who can be held responsible: the state, user, owner?

*Newspapermen always blame the state that underestimate situation and did not done effective arrangements although it had a number opportunities. But the state is now responsible for dealing and disposition with soil of unknown owners. As well known the former Czechoslovak Republic belonged into group of Soviet state model. Such model created only one state monopoly of ownership and previous owners had been intensively persecuted in order to resign their rights. After social changes in 90s years the restitution procedure has been launched but despite this fact 1/3 of whole Slovak territory has not still its owner. Original owners died or they are very old and are not capable to participate in complex restitution procedure or their children have no interest in ownership of land anywhere and more far. The state is trustee of this part of soil and has waited for great number of pending inheritance procedures.*

*For rest part of soil any ownership is responsible for performing prevention activities in order to keep the health status of soil. If he/ she is not able to meet the obligation and for example did not ask experts for help a state authority should impose sanction (particularly pecuniary sanction then injunction to proceed in construction or contamination activities).*

D- Please give practical examples (if any) and specify the situation regarding contaminated sites where the owner or the user disappeared.

*Slovak Republic had a great problem with consequences which resulted from presence of Soviet Army's troops on its territory during 1968 to 1992 years. A great part of Slovak territory was separated and given to Soviet Army to utilize for military goals. After departure of Soviet Army's troops they rested contaminated soil by crude oils and oil products in military areas. It was a serious social task to clean up this soil.*

*The second example is the first wave of bankruptcy of state enterprises. These state enterprises were not able to face the rival's press especially from small and medium enterprises of young managers and the Government commenced the sale of these enterprises to anyone who had money. Now we face the problem because surrounding areas of enterprises was and/or has been contaminated but new owner defends himself – It was consequences of previous production. I maintain environmental rules! You may impose a fine but to state enterprises which has not existed yet.*

E- Do you meet difficulties in reconciling special soil regulation and other regulations such as property laws, private contractual provisions?  
Please give examples.

*No we have no experience in the Slovak Supreme Court with solving such cases and other lower courts did not inform about difficulties because*

above mentioned Act on Prevention and Remedy of Environmental Damage is very fresh,

F- Are there penalties? Are they inflicted? If not, why? Please give examples.

*In general, there are a great number of penalties and fines which may be or must be imposed by state authority to wrongdoers who infringed rules protected soil. Penalties are divided into two groups. The first group is generated by torts of general nature, it means that wrongdoer infringes general rule. The second group contains special rules, for example he/she changed the nature of soil without state permission or did not reduce dangerous weed.*

*No we have no experience in the Slovak Supreme Court with solving such cases and other lower courts did not inform about difficulties.*

#### **IV- Care and rehabilitation of polluted soils**

A- Is there mandatory care or obligation to rehabilitate polluted soils (civil or public obligation)?

*There is a public obligation to rehabilitate polluted soils and partly civil obligation to repair spurious consequences of private activities (e.g. neighbours relations). The typical example is obligation of builder to remove all remains and dangerous waste which is able to contaminated not only my soil but soil of my neighbour.*

B- By whom? (the state, owner, user, etc.)

*Firstly the obligation to protect soil and rehabilitate soil burdens directly owners. But the Act on Prevention and Remedy of Environmental Damage modified owners liability for person who is called provider – it means any legal entity or individual – businessman who performs or controls its activity including anyone who obtained dominant position or was given by licence or permission.*

C- What are the criteria of rehabilitation: prevention of harm to environment and health, restoration of soil to its previous state, preparation of soil for future use, or taking into account its environmental potential?

*The main criteria of remedying environmental damage is prevention. The State allows for providers to consult the situation endangering environment with a state authority but this consultation does not vindicate provider. If responsible person of provider does not meet the criteria of prevention apart from the fact that there is no damage (Article 22 (1) of Act on Prevention and Remedy of Environmental Damage) state authority should impose him a fine.*

D- Who implements it and who controls it?

*According to Article 21 of Act on Prevention and Remedy of Environmental Damage state authority (Ministry of Environment and its lower district bodies) are responsible for performing supervisory activities.*

*Situation with the number of environmental inspectors is very poor and hence NGO's play important role in supervisory procedure.*

## CONCLUSION

Please explain your opinion regarding measures which seem appropriate to you in the matter, specifying what you are expecting from the European legislation?

Please explain, if you wish, your opinion regarding the framework directive proposal as well as perspectives of a protection orientated more broadly towards on the soil functions.

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You may provide your answers in a free style. There is no established length limit. Please do not hesitate to attach resumes or commentaries of the judicial decisions illustrating the discussed issues in the questionnaire.

For the effective organisation of the conference, please make sure your answer reaches **General Secretary of the Forum at [Francoise.Nesi@justice.fr](mailto:Francoise.Nesi@justice.fr) before 15 July 2008.**

Thank you very much in advance.

