



EU FORUM OF JUDGES FOR THE ENVIRONMENT
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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?

Chief Inspector for Environmental Protection provide the national electronic inventory of endangers and damages to the environment. (art. 28a of the Act of 20th July 1991 r. on Chief Inspectorate for Environmental Protection)

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

Chief Inspector for Environmental Protection is a centralized body of government administration, called upon to monitor execution of the environmental legislation and the examination and rating the current state of the environment, is supervised by the Minister of Environment.

The tasks of Chief Inspectorate for Environmental Protection are also executed by voivode (wojewoda) assisted by Voivodship Inspector for Environmental Protection, that are a part of the governmental administration.

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

Standards of the quality of soil are decided upon its constituents (constituent of certain elements and substances) stating the minimal level of these ingredients, under which there is an assumption of the damage to the soil. The minimums are dependent on the character of the soil (arable, forest, etc.) (art. 103 Act of 27th April 2001 on Environmental Protection)

The criteria of the damage of the soil are the change of it's composition causing at least one of the following, measureable effects:

- 1) exceeding the standards given by the law;
 - 2) the must of changing the way the land is being used.
- (§ 5 Regulation of the Minister of Environment of 30th April 2008 r. on Criteria of the evaluation of the damage to the environment)

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

Data of the inventory is open to the public, can be accessed electronically or on paper on the inquiry including the data of the person interested and the scope of the information. Information shall be delivered within 14 days from inquiry.

(§4 Regulation of the Minister of Environment of 26th February 2008 on inventory w of imminent threats of environmental damage and damages occurring)

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

The system described above lacks the experience sufficient to rate it.

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

The evaluation of the soil quality is a part of The State Environmental Monitoring System. Starosta (the head of the county executive) is responsible for periodical examination of the soil quality. (art. 109 Act of 27th April 2001 r. on Environmental Protection)

In order to improve the execution of these tasks the Minister Of Environment shall give the regulation on the scope and the extent of the examination. (art. 109 p 3,4 Act of 27th April 2001 on Environmental Protection) The regulation has not yet been given.

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

Anyone who is aware of the endanger or the damage to the environment is obliged to inform the Voivode and Inspector for Environmental Protection. (art. 11 Act of 13th April 2007 on prevention and remedying of environmental damage)

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

Only public authorities - Voivode and Inspector for Environmental Protection, as above.

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)

Criminal sanction

Whoever, being obliged, is not declaring the proper authorities the endanger or a damage to the environment shall be subject to the penalty.

(art. 28 p 2 Act of 13th April 2007 on prevention and remedying of environmental damage)

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

The is no statistic data available.

II- National legislation on soil pollution and enforcement

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

- Act of 27th April 2001 on Environmental Protection
- Act of 3rd February 1995 on Arable and Forest Land Protection
- Regulation of the Minister of Environment of 9th September 2002 on the standards of the soil quality
- Act of 13th April 2007 on prevention and remedying of environmental damage
- Regulation of the Minister of Environment of 26th February 2008 on inventory w of imminent threats of environmental damage and damages occurring
- Regulation of the Minister of Environment of 30th April 2008 r. on Criteria of the evaluation of the damage to the environment

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

The issues of the soil protection is regulated mostly by the administrative law, the are the norms of the criminal liability for damages to the soil, civil instruments are rear (ex. issue of liability, cost recovery proceedings)

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

Yes, by the Act of 13th April 2007 on prevention and remedying of environmental damage. The Act came into force on 30th April 2007.

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

The evaluation of the soil quality is a part of The State Environmental Monitoring System. Starosta (the head of the county is responsible for periodical examination of the soil quality. (art. 109 Act of 27th April 2001 r. on Environmental Protection)

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.)

Ex:

- The amendments of the character and the way of use of the arable and forest land can be done only in accordance with the rules given in the law upon a proper decision. (art. 7 Act of 3rd February 1995 on Arable and Forest Land Protection)
- The Act on the Inland waters is governing the issues governance of the soils covered with Waters.

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

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.)

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

Ad D, E, F,

Polish legal system provides the proper legal frames for the prevention, monitoring and remedying the soil pollutions. There are still some detailed regulation lacking to make the functioning of the system better. The evaluation of the efficiency of this legal system is not yet possible, as there is not enough experience. The first yearly report on the inventory and the action undertaken is to be issued by The Chief Inspector for Environmental Protection by the end of 2008.

III- Soil pollution and liability

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

The is no statistic data available.

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

The operator shall bear the costs for the preventive and remedial actions taken.

An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant when he can prove that the environmental damage or imminent threat of such damage:

1. was caused by a third party and occurred despite the fact that appropriate safety measures were in place;
2. resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

The operator that born the costs of preventive or remedial action shall be entitled to initiate cost recovery proceedings against:

- third party who has caused the damage or the imminent threat of damage,
- voievode in cases stated above.

Those actions are governed by the rules of civil liability.

(art. 22 Act of 13th April 2007 on prevention and remedying of environmental damage)

Criminal liability:

Art. 28. Act of 13th April 2007 on prevention and remedying of environmental damage

§ 1. Whoever, being obliged, is not undertaking the preventive or remedial actions shall be subject to the penalty.

§ 2. The same punishment shall be imposed on anyone, who despite his duty do not declare the proper authorities the fact of the damage

Art. 29. Act of 13th April 2007 on prevention and remedying of environmental damage

§ 1. Whoever, being obliged, is undertaking the preventive or remedial actions without or against the approving decision shall be subject to the penalty.

§ 2. The same punishment shall be imposed on anyone, who opposes the preventive or remedial actions.

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

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

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

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

See p. B above

IV- Care and rehabilitation of polluted soils

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

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

Ad A, B

Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

Where environmental damage has occurred the operator shall:

1. take all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services

2. take the necessary remedial measures

(art. 9 Act of 13th April 2007 on prevention and remedying of environmental damage)

The owner of the land shall bear the costs for the preventive and remedial actions taken if he knew or agreed the actions causing the damage.

(art. 12 Act of 13th April 2007 on prevention and remedying of environmental damage)

The Voivode declare by the decision which remedial measures shall be implemented in case the operator is not taking the proper preventive or remedial activities. (art. 15 Act of 13th April 2007 on prevention and remedying of environmental damage)

The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with it's the obligations laid down in the law, cannot be identified, there is a significant risk of adversely affecting human life or health or the damage may be unreperable , the competent authority may take these measures itself.
(art. 16 Act of 13th April 2007 on prevention and remedying of environmental damage)

The person that diminishes the arable value of the land shall bear the costs for the remedial actions.
(art. 20 Act of 3rd February 1995 on Arable and Forest Land Protection)

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 primary purpose of remediation is to restore the damaged natural resources. Where the damaged natural resources do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources, including at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition.

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land no longer poses any significant risk of adversely affecting human health.
(art. 6 p 3 Act of 13th April 2007 on prevention and remedying of environmental damage)

D- Who implements it and who controls it?

Operators shall identify potential remedial measures and submit them to the Voivodship for its approval.
(art. 13 Act of 13th April 2007 on prevention and remedying of environmental damage)

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.

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 before **15 July 2008**.

Thank you very much in advance.