

An aerial photograph of a city, likely Brussels, with a large, transparent, rectangular map model overlaid on it. A person is leaning over the map, looking at it. The map shows a dense urban area with a grid of streets, surrounded by green fields and a river. The text "Soil Monitoring Law" is overlaid in white on the top part of the map.

Soil Monitoring Law

Flemish perspective



Flanders
State of
the Art

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Bilbao, Common Forum autumn meeting
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Soil Monitoring Law

- *July 5th 2023 European Commission presented the draft Soil Directive*
 - *Official title: The Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)*
- ▶ Perspective of this presentation
- Flemish reaction
 - Mainly on Chapter IV Contaminated sites

Soil Monitoring Law

- ▶ *Soil is a vital, limited, non-renewable and irreplaceable resource*
- ▶ *Healthy soils form an essential basis for the economy, society and environment and fulfill several extremely important functions (food supply, crucial role in the carbon cycle, water management, climate adaptation, ...)*
- ▶ *So (finally) places soil on the European policy agenda*
- ▶ *The need for a directive is substantiated by indicating that the pressure on soils is still increasing and that more than 60% of soils in Europe are in an “unhealthy” condition*
- ▶ *Such substantiation is certainly important to refute criticism that soil belongs entirely under subsidiarity (and should not be regulated at European level)*

Soil Monitoring Law

- ▶ *With regard specifically to the soil contamination component, the directive stipulates that Member States:*
 - *develop a risk-based approach for the identification of potentially contaminated land, the investigation of the potentially contaminated land and the management of contaminated land*
 - *must ensure that all potentially contaminated land is investigated*
 - *develop a methodology for site-specific risk assessment*
 - *ensure that the competent authority carries out a risk assessment on each contaminated land*

SML – Flemish perspective

- ▶ *Overall, it is very positive that the European Commission is presenting a soil directive, thus highlights the importance of good soil quality*
- ▶ *It is also important that there is a European obligation that all countries must have an approach to (potentially) contaminated soils, so that companies in all countries have an obligation to tackle their soil problems, which ensures a "level playing field"*
- ▶ *Specifically for the soil pollution component, we welcome the step-by-step, risk-based approach, in which we recognize many elements from our Flemish policy framework*

Some questions - points of view

- ▶ Member States must define “soil districts” for their territory; *these are regions with a certain homogeneity in terms of, among other things, soil characteristics and land use. The monitoring system must determine whether the soil is “healthy” in these soil districts*
- ▶ *There is a separate chapter on soil contamination*
- ▶ Question:
- ▶ *Should potentially contaminated soils or remediated soils be included in these soil districts, or should it be possible to “cut them out”, given the specific approach for these soils?*
- ▶ Point of view:
- ▶ *Soil cure is also soil care*

Some questions - points of view

- ▶ *The Directive stipulates that Member States should develop a risk-based approach for the identification of potentially contaminated land, the investigation of the potentially contaminated land and the management of contaminated land (step by step, risk based, fit for use)*
- ▶ Question:
- ▶ *Is this future proof given the experiences of various Member States with the use of these policy instruments for emerging contaminants?*

Some questions - points of view

▶ *Diffuse soil pollution*

▶ *Question:*

▶ *What is the approach for diffuse soil pollution?*

▶ *Point of view:*

▶ *It seems most logical that these are included in the broad “soil health” approach*

Some questions - points of view

- ▶ *Guidelines for a common basis for tackling soil problems*
- ▶ Question:
- ▶ *Does the European Commission plan to develop technical guidelines (guidance documents) for, for example, the assessment of acceptable risk? This is currently left completely open to the Member States, while we notice that European standards or advice (e.g. EFSA) are published or even imposed on various health aspects*
- ▶ Point of view:
- ▶ *We think it would be desirable to develop such guidelines, which can then be used specifically per Member State as a basis for a risk assessment system taking into account Member State-specific characteristics*

Some questions - points of view

- ▶ *Participation*

- ▶ The text indicates that the “public concerned” must have *early and effective opportunities to participate in the development and application of the risk-based approach (even for the inventory of potentially contaminated land)*

- ▶ *Question:*

- ▶ *Does this go beyond what is classically done in democratic regulatory processes?*

Some questions - points of view

- ▶ Scope of “potentially contaminated soil”
- ▶ *The text gives the impression that all potentially contaminated soils must be mapped, regardless of how great the risk is (e.g. “any other event liable to cause soil contamination” must also be taken into consideration; so any storage activity seems to be included)*

- ▶ Question
- ▶ *How broad does the Commission see this definition?*
- ▶ Point of view
- ▶ *It seems logical that these are sites with a relevant or increased risk of contamination*

Some questions - points of view

- ▶ *Polluter pays principle*
- ▶ Land must be investigated and remediated “by the competent authority”; this is contrary to “polluter pays”.

- ▶ *Question*
- ▶ *Is the competent authority supposed to do this?*
- ▶ *Point of view*
- ▶ *It seems more logical to us that this is amended and that the competent authority must ensure that land is investigated and remediated*

Some questions - points of view

- ▶ *Assessment framework for measures*
- ▶ *When deciding which risk reduction measures to take, various matters must be taken into account (such as cost, benefit, effectiveness, sustainability, technical feasibility), but not the improvement of soil quality (or so it seems)*
- ▶ *Question*
- ▶ *Is it the intention that the evolution in “soil health” should also be taken into account here?*
- ▶ *Point of view*
- ▶ *Since we consider it important that soil is handled with care and that soil quality is taken into account, even in the case of contaminated soil, it is desirable to also include that the evolution towards “healthy soil” is taken into account*

THANK YOU – QUESTIONS?

ENSOR

V5

International workshop on

Emerging policy challenges on new soil contaminants

**Save the date: 14th and 15th of March
2024 - Brussels**

**Diffuse soil contamination and emerging
contaminants**

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