



The common forum guide to the soil strategy internet consultation

About this document

This document gives comments to the questions in the internet consultation concerning the soil protection strategy and soil framework directive. After each block of questions a comment will be given, describing the pro's and con's of certain answers and how some answers may have consequences for national soil policies or other EU policies. It is intended as a discussion paper, so please feel free to add your comments. I do hope the document also helps you in selecting the answers to the questions in the consultation.

Joop Vegter

The questions

Introduction: The paragraphs below correspond to the chapters in the questionnaire as presented on the consultation webpage

§1 Identification

The questions are whether we are an organisation and took part in working groups.

Comment: COMMON FORUM was involved as a stakeholder organization in the thematic strategy discussion. Many Common Forum members were also country representative.

Because of the nature of the questions (see later comments) it is quite difficult to answer on behalf of COMMON FORUM

§2 General Questions

These questions are about our level of expertise and which soil functions are important for our activities

Comment:

The COMMON FORUM answers would be :

- 1] We are sufficiently well informed
- 2] The area of COMMON FORUM activity does NOT rely on soil functions. But our field of interest can be related to some of the issues mentioned. Our activity seems less related to landscapes of interest and archaeological and geological heritage.

The relation between soil and human health and welfare is missing in the question (although we may be one of the organisms having soil as a habitat).

§3 Soil Threats

The questions in this paragraph concern:

- The relevance of the listed soil threats
- The choice for 3 priorities
- The type of action by the commission
- The need to know where the threats occur
- The risk area approach

COMMON FORUM considers contamination and sealing as most relevant (first block) concerning our “activities” (I would prefer field of interest instead of activities).

The question whether we think action is needed (second block) depends on what is meant by action. Action by the commission, the memberstates or regional authorities? Irrespective of the administrative level, action is needed for all threats. But if we consider the European dimension I would say that contamination (especially prevention) and sealing are the most important. After that erosion, where problems of EU dimension arise as a result of many local problems due to wrong agricultural practices on soils vulnerable for erosion.

Some other thoughts on the needs for action:

- Erosion, because of the many local impacts on soil fertility and quality can have EU wide consequences for sediment load in rivers, which leads to the need of dredging of sediment contaminated during their journey in rivers.
- Contamination (historical) requires local contaminated land management (high degree of subsidiarity) in view of different soils, pollutions and decision-making “culture”. Preventive approaches on the other hand must be more or less uniform throughout EU (level playing field).
- Compaction as a local problem affecting soil fertility, which can have EU wide impacts if the large amount of compacted soils affect water regimes at the EU level. Compaction may arise through sealing and intensive agriculture.
- Sealing has similar effects as compaction, but large scale sealing also block geochemical cycles, which may affect functioning of “ecosystem earth”. There is also a link with the watercycle and the problem of floods and landslides if the watercycle gets disturbed by too much sealed surfaces.
- Organic matter decline may be an important problem especially related to erosion and decline of biodiversity. This is really a problem with potential large effects (also in relation to climate change) but information about the intensity of organic matter decline in EU is rather fragmentary. As organic matter decline is very much related to agricultural practice this is primarily the responsibility of farmers, which should be stimulated by EU agriculture policy to move their practice into a more sustainable direction.
- Salinisation is a regional problem related to the overexploitation of water resources. Regional carrying capacity for the use of water resources for agriculture and in coastal regions for drinking water may vary in EU. Agriculture policies and subsidies for regional development should take these regional limitations into account.
- Soil biodiversity loss is important because biodiversity and the need to keep the life support system of our planet in good conditions is a major concern since the Rio declaration. Information about the status in EU is not

overwhelming. There are some ideas how to stimulate biodiversity but it is quite hard to put this into practice in EU regulations.

- Landslides. Risk for landslides are related to intensity of landuse, erosion risks and water regime. A regional problem. Landslide prevention may become a requirement for regional developments funds..

Concerning the level of action (third block) COMMON FORUM would favour the framework at EU level and measures taken at the memberstate (or even regional level). A question that comes up immediately is how specific the framework is going to be. Is it a light framework directive with common principles, which will only force the memberstates to make their own policy plans and their own regulations, or is it a framework directive containing a list of measures that have to be enforced in the legislation of the memberstates. A framework can also imply something else than a directive or something in addition to a directive. This –non directive – policy framework (which may complement a directive or not) can be included in the new soil communication which is presently prepared. This is important because soil protection would greatly benefit from improvements in other policy areas, like soil protection related cross compliance requirements in EU funding mechanisms. Cross compliance has been extensively discussed in the reform of the Common agriculture policy (CAP). But cross compliance can also be used for EU regional funds (and maybe other subsidies I am not aware of) to stimulate more sustainable soil friendly land use and contaminated land management. Another way of achieving soil protection is the incorporation of soil related aspects in the Water framework directive. Many soil threats are related to water or have also impacts on water. Sealing and compaction impede the percolation of top-soil and replenishment of groundwater and may cause overloading of surface water after heavy rain.

Erosion and salinization affect water quality. Landslides are also related to water. The idea behind the WFD is riverbasin management and management of the basin is obviously soil related.

The framework should at least do the following:

The owner/ user of the land should have a duty of care for the soil he uses. He should be made responsible for the contamination (and other degradation) he causes, while taking into account that the user cannot be held responsible for the diffuse inputs to soil which are beyond his control. These have to be managed by public authorities, at the right spatial scale. The hierarchy in land management from private or industrial owner, municipality, province, state up till EU (subsidiarity) should be made clear in the framework. Common goals should be framed in “duties of care” and we should avoid setting goals in terms of uniform soil numbers. Due to the large differences in soil types, climate and hydrology in the EU a concentration of a contaminant in soil can have very different consequences in terms of risks and opportunities for landuses and functions (as was already mentioned in a statement by the CLARINET network concerning the Environmental liability directive some years ago). Common numbers do not result in common goals or level playing fields.

§4 Sealing

Questions about the importance of sealing and the need to consider soil protection in spatial planning.

The above questions are easy. Sealing is an important threat. We have all seen the prediction of enormous urbanisation in Europe in the next 20 years. Reuse of brownfields should be stimulated and urban planning should allow for enough 'permeable (= non sealed) spaces. It is very important for spatial planning to take soil protection into account, or even better take the properties of the underlying soil and water system into account, when allocating land for certain uses and functions.

§5 Erosion

The questionnaire starts with a large question containing a list of options to prevent/remedy Erosion.

The list is quite confusing, because some may think that the Soil framework directive will force memberstates to implement all these measures in national law. This would be in contradiction with the idea of a "light" framework directive. As we remember from presentations by the commissions soil team the threats listed above will be dealt with in a spatial management unit called a "risk area". Memberstates will have to define risk area's based on characteristics of soils (soil vulnerability) and landuse. The list above may just mention some of the options for the "risk area manager" which may be appropriate. The appropriateness of measures will depend on many area specific aspects and socio-economic considerations. Most measures (apart from don't know, because the risk area manager has to know) may be appropriate in some situations. The only measure quite different from the rest is the application of exogenous soil organic matter (EOM). This measure does not really address the cause of the problems but only cures certain symptoms, and at a price: Applying EOM permanently in situations where organic matter is declining due to too intensive farming practices will result in accumulation of (toxic) metals and persistent chemicals. EOM does not stop the decline it just compensates the OM loss. Of course EOM applications could be a good temporary measure to revitalise some soils.

Further questions ask about the positive or negative impact of measures in the socio economic domain

I don't think COMMON FORUM will be negatively or positively affected socially or economically by the measures listed above

§6 Organic matter decline and soil biodiversity loss

The questions are of the same type as for erosion.

See comments on the previous questions. The risk area approach also applies here. The comment concerning EOM applications is also important here.

No impacts on COMMON FORUM in the socio economic domain

§7 Compaction

The questions are similar to the erosion questions.

As compaction will also be managed on a “risk area basis” the comments on the erosion question also apply here. Again there is an obviously not sustainable measure in the list above: deep ploughing. This may mitigate the effects of compaction if the source of the compaction problem is not longer active. But it is not a sustainable way to prevent compaction.

No socio-economic impacts on COMMON FORUM

§8 Salinisation

Same type of questions as for erosion.

See comments concerning risk area approaches for other threats. Some of the measures proposed do address the symptoms rather than the cause of salinisation. The optimal mix of approaches will depend on the characteristics of the area.

No impacts on COMMON FORUM

§9 Landslides

Same type of questions as for erosion.

See comments on other risk area approaches. Again the mix of measures should be defined for each risk area separately. One remark: the development of early warning systems may be useful but is not appropriate to prevent landslides.

No impacts on COMMON FORUM

§ 10 Contamination

This is of course the most important part of the questionnaire for COMMON FORUM. The first question is whether we are affected by soil contamination and whether we are a potentially soil polluting activity.

Activities of COMMON FORUM are affected by soil contamination, without contamination the network would not exist. However we are not polluting soil

The next question is about a definition of a contaminated site

The definition of a contaminated site is really a key question and a very complicated one. Because a “general “ definition of “contaminated site” will imply a definition of “contamination” and a definition of “site”. To make this even more difficult contamination can mean a state (contaminated soil) or an activity (somebody is contaminating the soil). If we use contamination in the broad sense (state and activity) than any definition may have consequences for preventive approaches, not only in soil protection but also for the EU policies on chemicals (REACH). If we define contamination as the borderline between natural or normal background levels and significant “additions” of contaminating substances to soil we may be in line with preventive approaches that try to avoid additional contamination and accumulation.

But this definition will result in a very large number of contaminated sites in most countries, which are unlikely to be remediated because they do not result in a significant risk for human health or the environment. If we define contamination in terms of risks for current or planned future land use we create a conflict with preventive approaches (less restrictions for leakages in soils at industrial sites for instance) and we run into the problem that spatial planners may “contaminate” a site just by planning an other use (interesting option for “polluter pays”). On the other hand this definition will lead to a more manageable number of sites.

We can also suggest a more restricted definition, which does not exist on its own but only applies WITHIN the context of a policy for historically contaminated land. This was what the WG contamination had in mind when they proposed a working definition in their report. A contaminated site may then be defined as a site that may need some form of remediation or restrictions in land use in view of risks associated with the current or future use of the site. COMMON FORUM (and WG contamination) feels that this restricted definition can only be based on risk to human health and the environment. If contaminated sites are only be defined in the context of a (national) policy and remediation programme, dramatic EU wide juridical interpretations of “contamination” (cf the van der Walle case) can be avoided. But one has to accept then that the definition will also depend on the framing of the national programmes. This means that contaminated sites may mean slightly different things in different countries, which does not seem a big problem at present.

The “site” part of the definition is complex as well. How do we define the borders of a site: A common contamination history? The borders of the ancient industrial facility that contaminated the area? The borders of current ownership? The area where a new use is planned (spatial planning unit)? The site definition problem has led to complicated juridical discussions and the way forward in solving these is to link contaminated land (not site) management more tightly to spatial planning. CLARINET also suggested that risk based LAND management should be framed in more general “spatial planning” terms, indeed dealing with land and not with individual sites without any spatial context .

The next question is about whether a potential buyer of land has the right to be informed whether a contaminating activity took place or is still taking place on the land in question.

I think COMMON FORUM will agree with this statement. This is not only just consumer protection (if you buy a product you want to know what it contains) but also a prerequisite for the duty of care by the landowner. Nobody will accept duties of care for bad surprises from previous owners.

The next question is a specification of the previous one in the sense that the information about land status should be in the form of a report.

COMMON FORUM agrees with the above statement in general terms. But we may point out that there are different options for putting this into practice. In the Flemish region a certified report is mandatory and is registered by the public authorities. Another way may be to address soil contamination issues in contracts between buyers and sellers, based on civil law. In short memberstates should allow to choose a way

that fits their legal structure as long as the resulting protection of the land buyer is equivalent.

The following questions are all related to a basic question which is not asked: Should the commission stimulate or force member states to develop a contaminated land policy and a remediation programme?

If we say yes because we feel that all EU countries should have a policy and a programme, then it is obvious that there should be national inventories. Because we are in favour of public awareness and accessibility of information we should be in favour of “public” inventories. The need for a remediation programme will also follow naturally from the policy. Some arguments in favour of “stimulation” of national approaches by the commission will be given below.

Why EU member states should have a contaminated land programme.

If soil contamination would only locally affect human health one could argue that it is up to the member states (subsidiarity) whether they want to address the issue in view of other health priorities. But because contaminated land can also affect other environmental targets which are addressed in EU environment policies, like groundwater, surface water, food safety, biodiversity, just to name a few, a contaminated land policy and remediation program can be justified for all member states. These programs need of course take into account the very different ecological and socio-economic situations in the member states and the differences in maturity of national contaminated land policies.

Why EU member states should have a soil pollution prevention programme

It is not very eco-efficient to have a contaminated land remediation programme without a programme for prevention of new contamination. We heard about plans to amend IPPC to cover soil related aspects. This is of course a good initiative but there is a huge amount of smaller (non IPPC) enterprises with potential soil polluting activities. WG contamination felt that member states should be stimulated to address prevention of soil contamination in their environmental permitting system. For the owner/operator avoiding cost of clean up is already a strong incentive for prevention, but to put prevention into practice the right assessment tools and preventive technologies must be in place. Among others a list of potential soil polluting activities should be available and appropriate techniques. Joint development of preventive technologies may even have positive impacts on the competitiveness of Europe in the field of environmental technologies

If the commission asks the member states to make an inventory of contaminated sites and to make a policy and a remediation programme, it seems logical that the commission also asks for an “inventory or list of potential soil polluting activities” and a soil pollution prevention programme.

§ 11 Private ownership

In this paragraph we are asked to give our opinion on a “duty of care” for landowners. I think that COMMON FORUM could agree with this statement if public authorities are also aware of their duties to assist the landowners in taking their responsibilities

§ 12 feedback

The last question asks for our opinion about the questionnaire

The questionnaire deals with quite complex matters. The questions do address some very important general issues but are framed in such a way that it is difficult to give concrete answers about what should be regulated at EU level and what should be left to memberstates. Some questions do on the other hand address very detailed and specific measures, which are not really compatible with the idea of a light strategic umbrella type soil directive. Mixing questions about strategic considerations with questions about the appropriateness of measures (operational level in management approaches) is confusing, especially for people that are not informed about the current ideas of the DGENV soil team concerning light directives, risk areas and regional management approaches.

The reader of the questionnaire is left with the impression of a very unbalanced EU policy. Attention to details about compaction, salinisation and landslides, issues hardly discussed in the first phase of the Soil thematic strategy discussion, and very important issues missing like:

- Prevention of local contamination
- Prevention of contamination due to non-sustainable agricultural practices
- Large scale pollution of soil due to atmospheric deposition and polluted surface waters (and sediments)

The last two points have very important EU wide dimensions. Prevention of local contamination is by definition local but the development of appropriate technologies can be EU wide (common market) and differences in prevention may affect the level playing field. The only place where the questionnaire refers to something which looks like “prevention” is the “list of potential soil polluting activities” in the second box of the contamination part.

Finally, it is really important to inform the audience addressed by the questionnaire about the “steering philosophy” of the soil framework and thematic strategy, which is: local and regional management based on common principles and responsibilities of owners and users of the land. This steering model is quite different from the more traditional approaches for water and air, where generic numerical quality targets and monitoring by public authorities play a more important role.