



INTERNATIONAL COMMITTEE ON CONTAMINATED LAND

QUESTIONNAIRE ABOUT LEGAL FRAMEWORK FOR SOIL/SITE CONTAMINATION MANAGEMENT

COUNTRY: [Portugal](#)

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OVERALL CONTEXT

As an overall context, it is important to clarify that Portugal does not have legislation on contaminated soil yet. So that, the answers will be based on what is foreseen for the future legislation, that is currently under development.

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Couleur
personnalisée(RVB(79;129;189))

1. Does your national policy have a specific definition of “contaminated site”, “contaminated soil”? If yes, please provide the definition.

It is foreseen that the future legislation includes the definition of “contaminated site”.

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2. Is Groundwater included in this definition?

According to the state of the art of the discussions on the legal instrument, “groundwater” is foreseen to be included in the above referred definition.

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3. Does your policy on contaminated sites/land/soil include other definitions (i.e. brownfield, sediment)?

We assume that it will include definitions on “urban soil use”, “industrial soil use”, “agricultural soil use”, “polluting activity”, among others.

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4. Which sources are you considering? Industrial operations? Transport? Urban contamination? Etc.

We are considering to include industrial activities, waste disposal, storage of hazardous substances and petroleum derivatives, terrestrial transport of hazardous substances and petroleum derivatives, but not yet consolidated.

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LEGAL FRAMEWOK

5. Does your country have legislation with respect to contaminated land management?

Not a specific one. There are provisions under a more general legislation.

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a. Whatever the situation is, please be precise if it's a specific or a common legislation, if integrated in a more general one (including prevention of emissions, soil protection, land planning, environment & health, etc.)

At this moment, there are some provisions on the waste legislation that obliges the soil remediation or decontamination project to be subjected to prior licensing by competent authorities.

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b. If there is no legislation, please be precise how you tackle the problem.

Until we have specific legislation, we tackle the matter through other legislation, namely on waste management legislation, IPPC legislation, environmental liability legislation and environmental impact assessment legislation.

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c. What are the main policy objectives?

The main policy objectives are to safeguard the soil quality, allowing it to be used in its diverse functions and to recover its ability, when contaminated, for its present or future use.

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d. What are the foundational principles on which the national policy is based? (e.g., polluter pays, risk-based, fit-for-use, stand-still, transparency, ...).

Our environment national policy is based on the polluter pays, precautionary and proximity, self-sufficiency principles, among others.

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4-6. What is the Chain of Liability for the management of contaminated land?

a. Polluter? Land owner? Last operator? Occupier?

The first responsible is the polluter. The upcoming law will further develop this issue.

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b. Is there any difference between new and historic contamination?

a. Yes. Specific provisions for both situations are foreseen.

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c. Can a responsible party pass on the liability to a purchaser? (under statutory law? Contractually?)

This possibility is foreseen to be considered in upcoming legislation.

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d. Do you separate the obligation to remediate soil pollution and the liability regarding the damage caused by soil pollution and the related remediation measures?

Under development, further to the provisions considered under the environmental liability legislation.

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e. Are you facing specific situations (e.g. privatization of the industrial activities, war impacted areas, ...) needing special programme?

Orphan sites are already considered under a specific programme.

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7. Are there any specifications at regional / local level?

The legislation may be subjected to specific adaptations for the autonomous regions of Azores and Madeira islands.

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8. Are there specifications for site closure?

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The upcoming legislation will define specifications for site closure.

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9. Is there any legal requirement to conduct investigation for potential contamination in the sale of the property?

Under assessment.

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10. Does your national policy have any kind of inventories/registers? If yes, please be precise regarding which sites are registered, how the data are collected and if the databases are public.

In principle, yes, but is currently under definition.

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11. What are the strong, weak points and the major bottlenecks with respect to the current regulations in your country?

Not applicable.

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TECHNICAL ISSUES RELATED TO THE LEGAL FRAMEWORK

12. Are there site investigation requirements?

They are foreseen on upcoming legislation and on technical guides and guidelines that will support it.

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13. Are Risk Assessment & Management the main tools?

In principle, yes, with derogations.

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2-14. Are there specific technical approaches used?

a. For Human Health (HH), Ecosystems, Groundwater (GW), Surface waters (SW), other targets (i.e. buildings, infrastructures, ...please be precise).

Under development.

On a site by site specific approach, or by derivation of guideline values?

If possible, please detail your answer.

The common approach will be through derived guidelines values, but we consider the possibility that the future law allows a site by site specific approach for example for metals.

b. Do you take into consideration others sources of pollution in the risk assessment?

~~Clarification on the question would be needed to provide an answer. It's currently under discussion.~~

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3-15. If the national policy uses guideline values, please be precise in describing the following points:

a. Reasons for derivation of generic values

The absence of specific studies on geological national background and public health turned out inevitable, for now, the use of values already derived or fixed by other countries.

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b. Objectives / levels of implementation (investigation, risk assessment, remediation)

The procedure for soil evaluation will, in principle, consider three levels - a preliminary evaluation level (to identify situations where contamination may have occurred), an exploratory evaluation level (that will include field analysis on expected contaminants for comparison against the reference values) and a detailed evaluation (with risk assessment for human health and ecosystems). The main purpose of the legislation on soil will be to remediate it, when contaminated, to a level of acceptable risk for human health and/or ecosystems. It is also foreseen a possibility of a faster procedure, with remediation to reference levels subjected to prior approval by the competent authority.

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c. Priority substances

In principle, hazardous substances and mixtures, hydrocarbons and its derivatives.

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d. Protocols of derivation (including acceptable risk levels used).

Under assessment.

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4-16. What are the drivers for remediation?

a. To what level is clean-up required? (i.e. acceptable risk, land use values, ...)

See above (15.b).

b. Does your national policy use cost-benefits analysis for the choice of the remedial solution?

At the current state of the development of the national legislation it is only possible to say that cost-benefit analysis will be considered on the decision of the remediation technique or other soil intervention that will be adopted.

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17. What are the main remediation strategies or treatment techniques used in your countries (including Natural Attenuation)?

The most common remediation technique is excavation and disposal of contaminated soil in a hazardous landfill.

a. Distribution of techniques?

There is no consolidated data regarding the distribution of implemented techniques.

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b. Evolution in time?

No consolidated data available.

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c. Acceptance of innovative treatment techniques?

Innovative techniques could be accepted.

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18. Are you considering sustainability in the national approach?

Definitely.

a. If yes, how? In particular, how the three pillars of sustainability are considered and balanced.

Under development.

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b. If no, explain the reasons and the future challenges.

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Not applicable.

5-19. How does your country bridge the CLM approach with:

a. Land planning programmes?

Under development.

b. Public health programmes (aggregation of impacts on surrounding populations)

Under discussion.

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FINANCIAL ISSUES

20. What are the specific practices with respect to "Orphan sites"?

The classification of a contaminated site as an orphan site determines high priority intervention subject to the approval by the Secretary of State for the Environment. Only after that it can be financially supported by European and national funds. A contaminated site can only be classified as an orphan site if it is not possible to act against the company or person responsible for the contamination (because it is not known or it does not exist anymore or it is not financially able to support the intervention cost). To be able to receive public funds, a partnership must be established between a governmental institution and the entity responsible for the decontamination.

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21. Do you have an idea of the annual budget allocated to Soil Contamination Management?

This Agency does not have this data.

a. How is it divided between public, private and others?

In general, for orphan sites (see above), the public (European and national) funds (POVT) can reach 70% of the total amount and the remaining 30% must be assured by the partnership. If a public entity is responsible for the decontamination, it must pay the remaining 30%.

b. What are the main financial / funding systems in place in your country? (e.g. Financial guarantees, insurance, public – private partnerships, special foundation, industrial consortium, enforcement, ...).

For orphan sites, see above (21.a). For occupational activities under the scope of Annex III of European Environmental Liability Directive, bank guarantees, insurance, establishment of specific funds and participation in environmental funds are allowed.

c. Between the different steps of management (investigation, remediation, monitoring...)?

No applicable.

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ORGANISATIONAL ISSUES



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22. How are stakeholders and in particular communities involved in the approach?

Public consultation, among other options on a case by case basis.

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23. Is there a specific approach for:

a. Brownfields?

Not yet.

b. Megasites?

Not yet.

c. Widespread pollutions?

Not yet.

d. Reuse of excavated soils? (e.g., in relation to their quality)

The reuse of excavated soils is considered a waste recovery, so, they must be subjected to prior decontamination, to levels consistent to the use that is proposed.

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24. Does your national policy include any accreditation system for consultants or service providers? If yes, please provide some details.

It may be a possibility in the upcoming legislation.

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25. Do you have any training / capacity building programme, any management accountability and performance measurement?

Not yet.

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26. How is the necessary inter-governmental coordination for CLM organized? (e.g. with Health Protection Department, with the public site owners, with state or local public sector environmental organizations, with special interest advocacy groups,)

Such coordination will be assured, namely through the establishment of an intergovernmental Group/Committee.

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CRUCIAL DEVELOPMENTS IN THE FUTURE

Are there any additional issues to be further developed in the following months/years whatever they are (Research and Development needs, organisational issues, ...)?

It is expected to have national legislation on contaminated soil and technical guides and guidelines to support it, by the beginning of next year.

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Unofficially or officially, do you see any opportunities for collaboration in the coming months or years that may improve overall coordination among international organizations? (e.g., conferences, workshops, international (technical or policy) initiatives, growing alliances (e.g., in support of redevelopment /reuse of contaminated lands, etc.).



The upcoming legislation brings a major challenge for the competent authorities, so that expertise is considered as crucial. International cooperation is, as well, considered an opportunity to increase knowledge levels.

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REFERENCES

Please give most important references (documents, website, projects, and case studies) that could be relevant for explaining your national approach