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**The Baseline Report under
the Industrial Emissions Directive:
a tool to gradually move towards common European
standards on contaminated areas and related criminal
offences?**

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Aims of this presentation:

- 1) Showing that in similar and connected areas the EU regulations have very different impacts on the Member States policies and legislation (namely: high impact for environmental liability, lower impact for environmental crimes, almost no impact for the remediation of contaminated areas)**
- 2) Discussing if and how a specific tool introduced by the EU legislation in a different area (namely: the Baseline Report obligation under the IED Directive) can help to fill this gap**

Introduction:

The Baseline Report (IED Directive) and the Guidelines for its implementation at European and national level

What is the Baseline Report

The EU Industrial Emissions Directive (2010/75/EC) provides that industrial operators should produce a *Baseline Report* on soil and groundwater quality.

The report is needed “*where an activity involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination*”.

The report has to be produced at the beginning of the industrial activity, as well as several times throughout the life of the plant and at the end of the activity. This will form the basis for a comparison with the state of contamination upon definitive cessation of activities.

EU Commission Guidelines for the Baseline Report (1)

The European Commission has recently issued (6 May 2014) guidance (2014/C 136/03) on the preparation of Baseline Reports as required under the Industrial Emissions Directive (2010/75/EU) in order to assess the state of soil and groundwater contamination at installations covered by the Directive.

The European Guidance can be downloaded here:

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0506\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0506(01)&from=EN)

EU Commission Guidelines for the baseline report (2)

Under the **EU** Guidelines:

“It is in the operator’s interest” to determine - by means of the Baseline Report – *“which contamination has been added in the course of the operation of the installation concerned since the baseline has been established”*. Furthermore:

- *“It cannot be concluded that in case of landfills no baseline report would be required”*.
- *“A number of key tasks”* (8) *“should be undertaken to both determine whether a baseline report needs to be produced for a particular situation and in order to produce the baseline report itself”*, which must contain – inter alia - *“the dates of all relevant soil and groundwater measurements”*.

With a similar approach, **DEFRA** Guidelines for **England and Wales** (February 2013) pointed out that a ***“robust baseline report”*** is in the operators’ interest.

This is correct, but does not refer to immediate future. Upon delivery of the Baseline Report to the Authorities, the operator has to comply with their country’s legislation on remediation of contaminated areas.

Member States Guidelines for the Baseline Report (1)

At Member States level, as far as I know, specific guidelines on the *Baseline Report* have been issued in **France** (“*Guide méthodologique pour l’élaboration du rapport de base prévu par la Directive IED*”, February 2014).

This “Guide” is very clear in providing that a Baseline Report is due only when both the two following conditions exist:

- a) an activity involves the use, production or release of relevant hazardous substances;
- and
- b) this can cause soil and groundwater contamination.

Member States Guidelines for the Baseline Report (2)

Other guidelines are under preparation in **Italy**; the latest draft is not very clear in limiting the obligation to the cases where both conditions required by the Directive and by the French Guidelines exist.

Germany issued specific guidelines in August 2013. They contain useful flow charts and tables – as well as a proposed outline for the report - which can help the operators in its preparation. Specific attention is given to the crucial issue of deciding in which way the grid of soil measurement points should be configured.

A translation into English of this document would be very useful.

First point of discussion: the Baseline Report and the lack of a common European legislative framework on environmental liability for the remediation of contaminated areas (1)

Remediation of contaminated sites is one of the few areas of Environmental Law where a common European legislation is missing.

Several attempts to approach such a discipline at European level have so far failed to bring about successful results.

First point of discussion: the Baseline Report and the lack of a common European legislative framework on environmental liability for the remediation of contaminated areas (2)

Member States regulations are not consistent on at least four fundamental aspects:

- **When is a site to be considered as legally contaminated** (even in the States where threshold limits exist, they are quite different also for pollutants covered by EU strategies, like POPs !)?
- **When does a legal obligation to clean up arise?**
- Does the owner or manager of an industrial site have the **obligation to investigate the soil, subsoil and water table? Duty to know?**
- **How must the remediation targets be identified** (targets set up by the law or identified by means of a case by case risk analysis?)

First point of discussion: the Baseline Report and the lack of a common European legislative framework on environmental liability for the remediation of contaminated areas (3)

Can the introduction – at European level – of the *Baseline Report* give new life to the efforts aimed at introducing an EU regulation of contaminated areas?

Does it at least introduce at European level the “**duty to know**”?

What can be – taking into account the Baseline Report discipline - a **limited but clear rationale** for a common European legislative framework on environmental liability for the remediation of contaminated areas?

Our **NEXT CHALLENGE at EU level** is to set up practical and legally admissible criteria regarding the obligation to return the site to the state described in the initial baseline report.

Second point of discussion: the Baseline Report and the environmental crimes connected to the omitted or delayed remediation of contaminated areas

In some European countries, the omitted or delayed remediation of contaminated areas is considered a specific crime, which involves sanctions for both individuals and legal entities.

The introduction – at a European level – of the *Baseline Report* can increase the number of cases where a site is going to be considered as ‘contaminated’ under national law.

Which consequences does this bear on the above mentioned environmental crimes?

Does the Baseline Report have the aim to increase our knowledge on the soil and groundwater or to nudge or even to push the operators towards a prompt remediation? If the latter is true, the different legal regulations of the remediation targets can heavily affect the parity of conditions for the operators in the EU.

Conclusion and recommendations (1)

After the introduction of the Baseline Report in the European discipline, the establishment of a common and comprehensive European framework on environmental liability for contaminated areas has now become a new and essential goal for Europe.

Conclusion and recommendations (2)

The first step towards such a goal should be initially targeted at focusing on the introduction of common technical standards for: a) a site to be considered as contaminated under the law and b) the identification of the remediation targets.

As to the environmental crimes connected to the omitted or delayed remediation of contaminated areas, the relevant diversities in the national criminal strategies of Member States do not seem to be rapidly leaning towards a common discipline. However, the diffusion at European level of the Baseline Report can perhaps indirectly help this difficult process.