

17th EXPERTS MEETING OF THE ECOLOGY WORKING GROUP
FOCUSSING ON SOIL CONSERVATION OF DANUBE COUNTRIES
WORKING COMMUNITY



„Best practice and pitfalls of soil protection legislation from a legislator’s perspective“

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1. Preliminary note
2. EU and Member State
3. Double tracked
4. Simplification
5. Key elements of good soil protection legislation



1. Preliminary note

International soil protection legislation

Soil Charta (Council of Europe)

World Soil Charta (FAO)

Convention on Biological Diversity (CBD)

Alpine Convention

European soil protection legislation

Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

Directive 2000/60/EC establishing a framework for Community action in the field of water policy

Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances

Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture

Directive 2006/12/EC on waste

Directive 1999/31/EC on the landfill of waste



National soil protection legislation

Düngemittelgesetz, Düngemittelverordnung, Kompostverordnung, Forstgesetz 1975, Abfallwirtschaftsgesetz 2002, Altlastensanierungsgesetz, Wasserrechtsgesetz 1959, Aktionsprogramm 2008, INVEKOS-Umsetzungsverordnung

Bgld. Bodenschutzgesetz, Bgld. Klärschlamm- und Müllkompostverordnung; Knt. Abfallwirtschaftsverordnung 2004, Knt. Klärschlamm- und Kompostverordnung; NÖ Bodenschutzgesetz, NÖ Klärschlammverordnung; OÖ Bodenschutzgesetz, OÖ Klärschlammverordnung, OÖ Bodengrenzwerte-Verordnung 2006, Sbg. Bodenschutzgesetz, Sbg. Klärschlamm-Bodenschutzverordnung; Stmk. Landwirtschaftliches Bodenschutzgesetz; Stmk. Bodenschutzprogrammverordnung; Stmk. Klärschlammverordnung 2007; Stmk. Gülleverordnung; Tir Feldschutzgesetz; Vlb. Gesetz über die Ausbringung von Klärschlamm, Vlb. Verordnung über die Ausbringung von Klärschlamm; Wr Gesetz über das Verbot der Ausbringung von Klärschlamm



norms are hardly coordinated and intertwine in a very complex way

fragmentation

lacking implementation

→ better less but therefore controllable and implementable rules

2. EU and Member State

allocation of rights and duties

soil framework directive:

based on ex-Art. 175 par. 1 EC [Art. 192 par. 1 TFEU]

subsidiarity principle

framework → implementation





- *EU-directive*:
superior importance (secure a Europe wide minimum level,
prevent a distortion of competition)
- *national law*:
national, regional, local circumstances (no distortion of
competition)

3. Double tracked

a new soil framework directive would lead to more standard density

(existing provisions would remain unchanged)

→ guiding and unification of the Member States' legislation

→ intensify the fragmentation

**classification, reduction, unification of the present law
(consistent federal soil protection legislation) !**





4. Simplification

2 class society:

- **consistent and effective legislation implementing the common guidelines**
- **inconsistent and ineffective legislation in a confusing melange**

**→ for an efficient form of soil protection regulations:
reducing provisions of the 2nd category**



5. Key elements of good legislation

- 1. slim soil framework directive**
 - a. unquestioned legal base**
 - b. provides essential legal areas**
 - c. implementation as far as possible on existing national law**
 - 2. clearing up of the law**
 - 3. slim and effective enforcement by national administrations, coordinative function of the EC**
 - 4. central national soil protection legislation**
- such reforms don't seem to be realistic**

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**„Soil protection policy: Setting the line
between legislation and incentives “**

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1. Incentives in general
2. Incentives in soil protection legislation
3. Setting the line

1. Incentives in general

behaviour modifications

- because of economically rational measures
- because of „moral suasion“

voluntariness:

1. contractual payments
2. informal instruments (f.e. agreements on self-confinement)

legislative supervision → mutual contracts, self-regulation and self-control





advantages:

attractive framework, private scope of implementation,
greater flexibility, taking of self-responsibility, motivation
to co-operate, modification in the society,
avoiding time-consuming legal disputes

incentive programmes as implementation measures for
European law

2. Incentives in soil protection legislation

reluctance

proposal 2 March 2010

Article 4

For the purpose of this Article, Member States may use their existing national, regional and local measures and programmes already set up under national or Union legislation or international agreements as well as voluntary measures.

Article 8

The action programmes may include statutory, administrative or contractual measures.



3. Setting the line

question of valuation

indispensable minimum standards → legislation

further achievement → support

example agricultural subsidies:

Cross compliance – legal standard, no support

Agri-environment – Art. 39 Regulation (EC) No 1698/2005 on support for rural development:

„Agri-environment payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Articles 4 and 5 of and Annexes III and IV to Regulation (EC) No 1782/2003 as well as minimum requirements for fertiliser and plant protection product use and other relevant mandatory requirements established by national legislation and identified in the programme.“





law – voluntary and incentive programmes

mix of instruments

a true challenging task !

Thank you for your attention!