

Council of Ministers approves regulation on uncontaminated excavated soil

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Introduction

Use of excavated soil

Qualifying as by-products

Introduction

On July 14 2016 the Council of Ministers approved a new regulation on uncontaminated soil and other naturally occurring material excavated in the course of construction activities. The regulation will enter into force on its publication in the *Official Gazette*.

The new regulation was adopted by the government under delegation by Parliament. In particular, the act will comply with the following criteria:

- coordination with other legislation;
- proportionality;
- a clear indication of the repealed rules;
- rationalisation and simplification; and
- coherence with EU legislation.

Different rules will apply depending on whether uncontaminated soil and other naturally occurring material will be used on the site where they were excavated or elsewhere.

Use of excavated soil

According to Article 185 of the Environmental Code, uncontaminated excavated soil and naturally occurring material used on the site where they are excavated fall outside the scope of waste legislation. As regards the re-use of excavated soil and other naturally occurring material on sites undergoing an environmental impact assessment proceeding, specific rules are provided in Article 24 of the regulation. In this case, a preliminary plan should be prepared in the context of the impact assessment proceeding and analysis and other activities should be undertaken to verify that the soil and other material are uncontaminated. Only after this verification can the final project be submitted to the competent authorities.

Qualifying as by-products

When soil and material are used on sites other than where they have been excavated, rules on by-products apply. According to Article 184-*bis* of the Environmental Code, a substance or object can be regarded as a by-product if the following conditions are met:

- further use of the substance or object is certain;
- the substance or object can be used directly without any further processing other than normal industrial practice;
- the substance or object is produced as an integral part of a production process; and
- further use is lawful (ie, the substance or object fulfils all relevant product, environmental and health protection requirements for its specific use and will not have an adverse impact on the

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environment or human health).

Article 4 of the regulation further details the requirements regarding the specific case of uncontaminated soil and other naturally occurring material excavated in the course of construction activities. Compliance with Article 4 is confirmed by submission of the following:

- a plan for the use of the excavated soil and other material, before construction work begins; and
- a declaration that the excavated soil and other material have been used in accordance with the plan, after the completion of the construction work.

The procedure to qualify uncontaminated excavated soil and other material as by-products changes depending on the characteristics of the construction site in question. The regulation distinguishes between the following:

- large construction sites where more than 6,000 cubic metres of soil or material is excavated that undergo an environmental impact assessment proceeding or obtain an integrated environmental permit;
- small construction sites where up to 6,000 cubic metres of soil or material is excavated (even if they undergo an environmental impact assessment proceeding or obtain an integrated environmental permit); and
- large construction sites that do not undergo an environmental impact assessment proceeding or obtain an integrated environmental permit.

In the first case, the proponent (ie, the party that proposes the plan) must prepare a "plan for the use of the excavated soil and materials" to be submitted to the competent authorities at least 90 days before construction work begins. Within 30 days, the competent authority can ask the proponent to supply further documentation or clarifications. The plan must be drafted according to Annex 5 of the regulation. In addition to information on the quantity of soil expected to be used, locations and modalities of use, the plan must include soil analysis data which confirms that the site is uncontaminated. The operator must inform the authorities if any potential contamination is found, as per Article 242 of the Environmental Code.

Construction work can begin 90 days after the plan (or supplemental documentation, if required) has been submitted to the competent authorities. Articles 13 to 17 of the regulation provide specific rules concerning a plan's period of validity and modifications that can be made.

In the case of the second and third sites, a plan will not need to be submitted to the competent authorities; instead, submission of a declaration of use will suffice. The declaration must:

- be sent to the authorities at least 15 days before construction work begins; and
- confirm that Article 4's conditions have been fulfilled.

The declaration must be issued according to Annex 6 of the regulation.

The new regulation also provides specific rules regarding soil and material excavated from a contaminated site (Articles 12, 25 and 26) and their temporary deposit (Article 5 and 23), as well as transitional provisions (Articles 27 to 31).

For further information on this topic please contact [Luciano Butti](#) or [Beatrice Toniolo](#) at B&P Avvocati by telephone (+39 045 8012901) or email (luciano.butti@buttiandpartners.com or beatrice.toniolo@buttiandpartners.com). The B&P Avvocati website can be accessed at www.buttiandpartners.com.

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