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NOTE

from :	General Secretariat
to :	Delegations

No. prev. doc. :	6563/09 ENV 114 AGRI 61 DEVGEN 41 FORETS 16 FSTR 26 RECH 49 REGIO 4 TRANS 69 CODEC 192
No. Cion prop. :	13388/06 ENV 495 AGRI 305 DEVGEN 232 FORETS 32 FSTR 64 RECH 242 REGIO 53 TRANS 246 CODEC 1012 - COM(2006) 232 final

Subject :	Proposal for a Directive of the European Parliament and of the Council establishing a framework for the protection of soil - Presidency proposal
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Delegations will find attached Presidency suggestions for an overall compromise package with a view to permitting the Council to reach political agreement on the above-mentioned proposal for a Directive in June 2009.

Underlining indicates changes of substance compared to document 6563/09, and "[...]" indicates a deletion.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a framework for the protection of soil¹

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee^{*},

Having regard to the opinion of the Committee of the Regions^{**},

Acting in accordance with the procedure laid down in Article 251 of the Treaty^{***},

Whereas:

[*Recitals omitted.*]

¹ DE/NL/AT oppose the proposal for a Framework Directive on soil protection for reasons of subsidiarity/proportionality.

^{*} OJ C ...

^{**} OJ C ...

^{***} Opinion of the European Parliament of ... (OJ C), Council common position of ... (OJ C) and position of the European Parliament of (not yet published in the Official Journal). Legislative resolution of the European Parliament of ... (not yet published in the Official Journal) and Council decision of ...

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

Article 1

Subject-matter and scope

1. This Directive establishes a framework for the protection of soil, its sustainable use and the preservation and, where technically feasible and costs are proportionate to the expected environmental and social benefits², restoration of the capacity of soil to perform as many as possible of the following environmental, economic, social, scientific and cultural functions:
 - (a) food and other biomass production, including in agriculture and forestry;
 - (b) storing, filtering and transforming nutrients, substances and water, as well as replenishing bodies of groundwater;
 - (c) basis for life and biodiversity, such as habitats, species and genes;
 - (d) physical and cultural environment for humans and human activities;
 - (e) source of raw materials;
 - (f) acting as carbon reservoir;
 - (g) archive of geological, geomorphological and archaeological heritage.

² ES/IT/PT/Cion would prefer to move the aspects of costs/benefits to a recital; IE/RO wish to see health and safety concerns reflected.

To that end, it lays down measures for the prevention of soil degradation processes, caused by a wide range of human activities with due account also being taken of natural causes ³, which significantly adversely affect the capacity of a soil to perform those functions while taking into account that some functions are mutually exclusive. ⁴ To address such soil degradation processes, it also lays down provisions for establishing measures for the restoration and remediation, including mitigation, of degraded soils to a level of functionality consistent at least with its current and approved future use. ⁵

³ The following recital will be added: "Soil degradation can have both natural origin and be caused by human activity. Some naturally occurring soil degradation processes cannot be avoided or mitigated and others can be acceptable to the extent that they do not exceed the level or risk acceptability established by Member States."

⁴ The Presidency proposes amending recital (7) to read as follows: "Soil should be used in a sustainable manner which preserves its capacity to deliver ecological, economic and social services, while maintaining its functions so that future generations can meet their needs. While recognising that some soil functions may be mutually exclusive, as many as possible should be preserved."

⁵ The Presidency suggests amending recital (26) as follows: "Taking into account the polluter pays principle, Member States should ensure that action is taken to remediate the contaminated sites identified within their national territory. When carrying out the identification and remediation of contaminated sites, Member States have to take into account the current and approved future use of the land. If there is no approved future use of the land at the time of the assessment of the risk of the site, only the current use should be taken into account. If the Member State intends to change the approved use of the land to a less sensitive use, in order to reduce the risk to human health or the environment, it should do so to ensure that the approved use of the land is always compatible with a level of risk that is not significant for human health and the environment."

2. This Directive shall apply to soil as defined in Article 2(1), excluding
- (i) groundwater ⁶ as defined in Article 2(2) of Directive 2000/60/EC of the European Parliament and of the Council ^{*} and as covered by Directive 2006/118/EC of the European Parliament and of the Council ^{**},
 - (ii) the seabed, ⁷ and
 - (iii) soil that forms part of bodies of surface water under Article 2(10) of Directive 2000/60/EC.
3. Member States may decide, on a case by case basis, if so provided under national law, not to apply this Directive to soil where ongoing activities serving national defence purposes are taking place, if they deem that such application would have an adverse effect on those purposes.⁸ [...]

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⁶ The following new recital (8a) will be added: "Specific provisions concerning the protection of groundwater are laid down in Directive 2006/118/EC and Directive 2000/60/EC. In order to avoid legal uncertainty, it is therefore opportune to exclude groundwater from the definition of soil, while ensuring that groundwater is considered as a possible receptor of soil contamination in the context of the identification and remediation of contaminated sites and related provisions in this Directive."

^{*} OJ L 327, 22.12.2000, p. 1.

^{**} OJ L 372, 27.12.2006, p. 19.

⁷ The following new recital will be added: "With respect to the scope of this Directive and the exclusion of seabed, it is important to respect Member States' existing national provisions in relation to the interface of maritime and terrestrial jurisdiction."

⁸ See Directive 85/337/EEC (EIA).

⁹ FI/SE request additional explanation in a recital.

Article 2
Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) "soil" means the top layer of the Earth's crust situated between the bedrock and the surface. The soil is composed of mineral particles, organic matter, water, air and living organisms ¹⁰;
- (2) "sealing" means the permanent covering of the soil surface with an impermeable material;
- (3) "hazardous substances" means substances or mixtures within the meaning of Regulation (EC) No 1272/2008 of the European Parliament and of the Council ^{*}; ¹¹
- (4) "potentially soil-contaminating activities" means human activities which have the potential to damage soil significantly due to the ¹² use, handling or storage of hazardous substances and which could result in contaminated sites;
- (5) "contaminated sites" means sites where there is a confirmed presence, caused by human activities, of hazardous substances to such a degree ¹³ that Member States consider that they pose a significant risk ¹⁴ to human health or the environment, including groundwater. Such risk is to be assessed taking account of the current and approved future use of the land and all possible known relevant contaminant pathways;

¹⁰ RO: reservation.
The Presidency suggests amending recital (5) as follows: "Soil variability is very high in the Community and enormous differences exist in its structural, physical, chemical and biological state both within individual profiles and between soils, including factors such as the distance of the bedrock from the soil surface. These diverse conditions and needs in the Community should be taken into account as they require different specific solutions for the identification of priority areas [...], definition of targets and execution of appropriate and proportionate measures to ensure protection of soil."

^{*} OJ L 353, 31.12.2008, p. 1.

¹¹ BE/FR/PT/FI/SE have scrutiny reservations.

¹² RO requests to add "improper".

¹³ ES/RO/Cion: "level"; PT/UK: scrutiny reservation

¹⁴ UK suggests "likely" instead of "all possible known", and, supported by EL/FR, a recital stating that it would be for Member States to define "significant risk", which may not depend only on the presence of certain substances.

- (6) "register" means the list of sites referred to in Article 10(2)(a) where a potentially soil-contaminating activity is taking place or has taken place in the past;
- (7) "inventory" means the inventory of contaminated sites as defined in point 5;
- (8) "priority areas" means areas where there is decisive evidence, or legitimate grounds for suspicion, that one or more soil degradation processes exceeding the level of risk acceptability referred to in Article 6(2)(b) is occurring or is likely to occur in the near future;
- (9) "soil degradation processes" means the following processes [...]:
- (i) erosion by water or wind;
 - (ii) organic matter decline brought about by a steady downward trend in the organic fraction of the soil including peat, but excluding non decayed plant and animal residues;¹⁵
 - (iii) compaction through an increase in bulk density and a decrease in soil porosity;¹⁶
 - (iv) salinisation through the accumulation in soil of soluble salts;
 - (v) landslides brought about by the down-slope, moderately rapid to rapid movement of masses of earth above the bedrock;
 - (vi) acidification by significantly decreasing the soil pH value.¹⁷

¹⁵ The following new recital will be added: "Soil organic matter comprises, where it occurs, peat. The continued extraction of peat, which is permissible in principle as a source of raw material, may cause a decline in soil organic matter and therefore would have to be assessed against the levels of risk acceptability established by Member States pursuant to this Directive."

¹⁶ The Presidency suggests the following amended new recital: "Soil compaction refers to the increase of bulk density and a decrease in soil porosity brought about by inappropriate land management practices and inappropriate use of heavy machinery. [...]"

¹⁷ The following new recital on acidification will be added: "Acidification is a soil degradation process, particularly of concern in relation to productive soils. However, it is recognised that certain naturally occurring acid soils would need to be maintained in this state in order to perform their soil functions."

Article 3
*Integration*¹⁸

In the development of [...] policies which can significantly exacerbate or reduce soil degradation processes, Member States shall take into account the impacts of such policies on those processes, in particular in areas such as regional and urban spatial planning, transport, energy, agriculture, rural development, forestry, raw material extraction, trade and industry, product policy, tourism, climate change, environment, nature and landscape.

¹⁸ The Presidency suggests the following changes to recital 11 to clarify the aim of Article 3: "(11) Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of Community policies and activities, in particular with a view to promoting sustainable development. Given that numerous economic, environmental and social activities depend or have an impact on soil, there is a need to ensure that soil protection aspects are integrated into [...] policies which may [...] significantly exacerbate [...] soil degradation processes [...]. This Directive should therefore make provision for Member States to [...] take into account the possible impact [...] on the prevention of soil degradation processes and the protection of soil functions in the concepts and principles which are the basis for decision-making in these areas. Such provisions are of a procedural nature and their requirements should either be integrated into existing procedures in Member States or incorporated into specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different policy making levels.

Article 4

*Precautionary and preventive measures*¹⁹

For the purpose of preserving the soil functions and the sustainable use of soil referred to in Article 1(1), Member States shall ensure that appropriate and proportionate measures are taken, according to national or regional [...] circumstances:²⁰

- (a) to prevent or minimise adverse effects from actions that Member States consider are likely to hamper significantly any of the soil functions referred to in Article 1(1);
- (b) to limit the intentional or unintentional introduction in order to avoid accumulation of those hazardous substances on or in the soil that would significantly hamper soil functions or give rise to significant risks to human health or the environment, excluding those due to air deposition²¹ and those due to a natural phenomenon of exceptional, inevitable and irresistible character;
- (c) to prevent the intentional and unintentional introduction of relevant hazardous substances on or in the soil by dumping, leaking or spilling.

For the purpose of this Article, Member States may use their²² existing national, regional and local measures and programmes already set up under national or Community legislation²³ or international agreements as well as voluntary measures.

¹⁹ UK requests additional exclusions/clarification of links in relation to existing EC legislation.

²⁰ ES/IT question the added value of the reference to different circumstances. Cion has a reservation if the aim of the formulation is additional flexibility for Member States.

²¹ SK has a reservation on the exclusion of air pollution.

The Presidency suggests the following new recital: "Soil functions may be hampered by air deposition. However, measures at source to prevent air pollution are dealt with in other EC legislation."

²² AT: "rely on", opposed by Cion.

²³ The Presidency proposes to add a new recital: "Existing national, regional and local measures and programmes already set up under national or Community legislation, such as under inter alia Directive 2008/01/EC concerning Integrated Pollution Prevention and Control, Directive 2000/60/EC establishing a framework for Community action in the field of water policy and its daughter Directives, and Directive 2004/35/EC concerning Environmental Liability, can be used as basis for precautionary and preventive measures."

Article 5

Sealing

For the purpose of preserving the soil functions and the sustainable use of soil referred to in Article 1(1), taking into account relevant environmental, social and economic benefits from sealing, Member States shall take appropriate and proportionate measures

- to contain sealing, where necessary,

and

- where sealing is to be carried out, to mitigate its effects, for example by the use of construction techniques and products which will allow as many of those functions as possible to be maintained.²⁴

²⁴ AT requests measures "to reduce further sealing", deletion of the examples given, and instead to "limit sealing to the extent that is necessary for technical or functional reasons". UK, supported by FI and opposed by BE/IT/PT and Cion, suggests to "control" sealing. HU/SK request a reference to "high value soils".

The Presidency suggests to amend recital (13) as follows: "Sealing is becoming significantly more intense in the Community as a result of urban sprawl and increasing demand for land from many sectors of the economy, and this calls for a more sustainable use of soil.

Recognising that agriculture, forestry and nature conservation play a crucial role in maintaining soil quality and revitalising soil and that due consideration should be given to requirements of urban development, the construction of buildings and structures and to all necessary preparatory and accompanying measures, particular attention should be paid to the overall effects of sealing.

For the purpose of containing sealing and reducing the depletion of greenfield sites, the rehabilitation of brownfield sites could be considered one of the appropriate options. Where sealing does occur, Member States should provide for construction and drainage techniques that would allow as many soil functions as possible to be preserved."

Furthermore the Presidency suggests amending recital (20) as follows: "In compliance with the prevention principle as laid down in Article 174 of the EC Treaty, this Directive should contribute to the prevention and reduction of the introduction of hazardous substances into soil to avoid soil contamination and to preserve soil functions. However, certain practices for overriding safety reasons such as sustainable use of de-icing salt may be continued.".

Chapter II

Soil Degradation Processes

SECTION ONE

IDENTIFICATION OF PRIORITY AREAS ²⁵

Article 6

Identification of priority areas requiring special protection from ²⁶ erosion, organic matter decline, compaction, salinisation, landslides or acidification

1. Member States shall identify priority areas, as defined in Article 2(8), on their national territory requiring special protection against soil degradation processes defined in Article 2(9).
2. By ...^{*}, and for the soil degradation processes erosion, organic matter decline, compaction, salinisation, landslides and acidification, Member States shall identify, having regard to paragraph 6, the soil degradation processes which are of relevance for their territory or part of their territory. For such degradation processes, Member States shall:
 - (a) evaluate, based on but not restricted to the elements set out in the indicative list in Annex I [...], the extent to which their national territory is subject or likely to be subject in the near future to such degradation processes
 - (b) establish the levels of risk acceptability of the soil degradation processes, having regard to the objective of preserving soil functions pursuant to Article 1(1) and the sustainable use of soil;
 - (c) identify priority areas on their national territory, at the administrative level and geographical scale that Member States consider appropriate, that exceed the levels of acceptability established in point (b).

²⁵ AT/UK have major concerns in relation to the "priority area" approach.

²⁶ EL suggest "soil degradation processes" instead of the enumeration.

^{*} 7 years after entry into force. IE requests 3 years more.

3. For the purpose of the evaluation carried out under paragraph 2(a), Member States may base the identification of areas on empirical evidence or validated models. Where appropriate existing data, including maps and research, may be used.
4. For the purpose of paragraphs 2(b) and 2(c) Member States shall take into account, as far as relevant and scientifically feasible, the effects of those processes on greenhouse gas emissions, desertification and soil biodiversity loss.
5. The priority areas identified pursuant to paragraph 2(c) shall be made public and updated at least every ten years.
6. Where, on the basis of the physical and climate characteristics of its territory, a Member State considers that one or more of the soil degradation processes referred to in paragraph 2 are not occurring or will not be likely to occur in the near future in their territory or part of their territory at a level considered relevant with regard to the preservation of the soil functions pursuant to Article 1(1) and the sustainable use of soil, it shall notify the Commission thereof within four years after entry into force of this Directive.
7. Member States shall designate the competent authorities to be responsible for the identification of priority areas.

(Article 7: deleted)

SECTION TWO
ESTABLISHMENT OF TARGETS AND ACTION PROGRAMMES

Article 8

Action Programmes to combat erosion, organic matter decline, compaction, salinisation, landslides and acidification

1. For the purpose of preserving or, where technically feasible and costs are proportionate to the expected environmental and social benefits²⁷, restoring the soil functions and ensuring the sustainable use of soil referred to in Article 1(1), Member States shall, in respect of the priority areas identified in accordance with Article 6, draw up, at the administrative level and geographical scale that they consider appropriate, an action programme including at least risk reduction targets²⁸, measures to reach those targets, a timetable for the implementation of those measures and an estimate of the allocation of financial resources for their implementation. [...] Such programmes may build upon existing national, regional and local measures and programmes already set up under national or Community legislation or international agreements. The action programmes may include statutory, administrative or contractual measures²⁹.

²⁷ See footnote on the same wording in Article 1(1), whereby PT could accept this wording in this Article..

²⁸ The Presidency suggests amending recital (17) as follows: "Action is to be taken under the responsibility of Member States, at the most appropriate level, based on the establishment of risk reduction targets and programmes of measures to reach those targets. Such targets may refer to the intensity of the soil degradation process considered, to its frequency, to its extension or its risk of occurrence, as appropriate."

²⁹ UK requests wording to the effect that cross-compliance and agri-environment measures under CAP can be relied upon, and to reword the recital accordingly.
The Presidency suggests amending recital (18) as follows: "Such action programmes [...] should take into account the social and economic impact of the measures envisaged; they should be reviewed periodically and may build on obligations, plans and programmes, including voluntary agreements, already set up under national or Community legislation (such as inter alia CAP cross-compliance and rural development measures) or international agreements. Existing voluntary agreements, voluntary Codes of Practice, covenants and other administrative and contractual measures may be included within the measures under the action programmes pursuant to this Directive insofar as they are appropriate to achieve the risk reduction targets set up by Member States therein."

2. When drawing up and revising the various elements of the action programmes pursuant to paragraph 1, Member States shall give due consideration to the social and economic impacts, cost-effectiveness and technical feasibility of the measures envisaged as well as enhance coherence with existing national, regional and local measures and programmes, in particular those taken in the context of cross-compliance and rural development within the CAP.

Member States shall indicate in their action programmes how the measures are to be implemented and how they will contribute to the achievement of the [...] targets established in application of Article 8(1).

3. Where an area is identified as requiring special protection from different concurrent soil degradation processes, Member States may adopt a single programme in which appropriate risk reduction targets are to be set for all the degradation processes identified together with the appropriate measures for reaching those targets.
4. The action programme shall be drawn up by ...^{*} and shall be in application no later than by ...^{**}.

The action programme shall be made public and shall be updated at least every five years and reviewed at least every ten years.

(Article 9: deleted)

^{*} 9 years after entry into force. IE requests 3 more years.

^{**} 10 years after entry into force. IE requests 3 more years.

Chapter III

Soil contamination

SECTION ONE

IDENTIFICATION AND INVENTORY

Article 10

Identification and inventory of contaminated sites

1. In order to ensure that soil contamination is addressed systematically, it is necessary for Member States to define and apply a general policy for contaminated sites, which shall rely on the obligations for:
 - identification of sites linked to potentially soil-contaminating activities,
 - identification of contaminated sites,
 - establishment of soil status reports,
 - remediation of contaminated sites.
2. For the purpose paragraph 1, Member States shall:
 - (a) within one year from [transposition date], adopt and make public, a national list of potentially soil-contaminating activities based on the activities set out in the indicative list in Annex II [...]; ³⁰

within seven years from [transposition date], have identified, if they have not yet done so, the location of at least the sites where the potentially soil-contaminating activities as indicated in the list defined pursuant to the preceding subparagraph, are taking place or have taken place in the past.

³⁰ Cion opposes making the list in Annex II indicative.

The results of this identification shall be taken into account for land use planning and development and shall be compiled in a register of sites linked to potentially soil-contaminating activities as defined in Article 2(6) which shall be updated at least every five years.

- (b) for the sites identified in accordance with point (a), ensure that the competent authorities designated in paragraph 6 make sure that the specific procedure defined below to determine whether the site is a contaminated site is applied.

For the purpose of accelerating the identification of contaminated sites, Member States may rely on ³¹ changes of land use on these sites as one of the triggers to apply this specific procedure.

This specific procedure shall include:

- (i) an analysis of the existing information on present and past activities on the site, in particular as regards the handling, the use and storage of relevant hazardous substances over time, and any evidence of accidents involving the emission of relevant hazardous substances;
- (ii) an analysis of the presence of human or environmental receptors that could suffer from any contamination, taking into account all possible known relevant contaminant pathways;

³¹ PT suggests "may take into account" instead.

- (iii) if the analysis carried out under points (i) or (ii) indicate a significant possibility³² of a site being a contaminated site, Member States shall apply one of the following alternatives:

either

- ensure that the concentration levels of relevant hazardous substances linked to the activities carried out on the site are measured, and for that purpose, Member States shall establish the methodology necessary for determining those concentration levels.³³ For those sites where the concentration levels of relevant hazardous substances are such that there are sufficient reasons to believe that they may pose a significant risk to human health or the environment, Member States shall ensure that a site-specific³⁴ risk assessment is carried out, which also takes into account the risk to groundwater;

or

- ensure that a³⁵ risk assessment is carried out which also takes into account the risk to groundwater, and for that purpose, Member States shall establish the risk assessment methodology.³⁶

If the assessments carried out pursuant to either point (i), [...] (ii) or (iii) have concluded that there is no significant possibility that a site is contaminated, Member States are not required to investigate further that site if there has not been additional information which could change the assessments carried out and if there have not been changes which could influence the state of soil.

³² UK, supported by FI, suggests "probability" instead.

³³ FI requests to move provisions on chemical analysis into a recital.

³⁴ SE: delete "site-specific".

³⁵ BG: add "site-specific".

³⁶ BG/PT oppose the degree of flexibility foreseen and prefer greater harmonisation.

Member States may determine that a site is a contaminated site on the basis of the outcomes of either point (i), (ii) or (iii). Member States may proceed directly to the identification steps set out in point (iii) to determine whether a site is contaminated.

3. Member States may exempt from the investigation procedures set out in paragraph 2(b):

- operating installations [as defined in Article 3(3) of the Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)] * which have been granted a permit to operate that includes obligations to prevent soil contamination and to monitor the state of the soil. The outcome of the monitoring shall be made available to the competent authorities for the purpose of Article 10(2)(b);
- sites which they have already identified as contaminated sites prior to [transposition date];
- sites which they have already identified as non contaminated sites prior to [transposition date], if the information on which the identification was based provided the same level of certainty as the provisions in paragraph 2(b) and if there have not been other changes which could influence the state of the soil.

* [OJ L ... (act not yet adopted)]
AT prefers previous wording on operating installations which have been granted a permit and include monitoring obligations, without reference to IPPC Recast; BE: study reservation.

4. Member States shall, in accordance with the procedure laid down in paragraph 2, identify contaminated sites on their national territory. Member States shall establish an inventory or inventories of contaminated sites, covering the whole of their national territory, which shall be finalised within 25 years of [transposition date] ³⁷, having regard to continuous update requirements. ³⁸ The inventory shall be made public and updated at least every five years in particular to include new contaminated sites that have been identified. When updating the inventory, Member States may exclude the sites which have undergone remediation.
5. In order to have proactive and prevention actions and to maximise efficiency of the identification and remediation of contaminated sites, the identification procedure provided for in paragraph 2 shall be performed, if not already performed, on the basis of prioritisation to be established by the Member State within five years from [transposition date] ³⁹, at the administrative level and geographical scale that Member States consider appropriate. Such prioritisation shall give precedent to the investigation of those sites where hazardous substances as referred to in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 ^{*} can be found, or to sensitive uses on sites according to the receptors ⁴⁰.

³⁷ FR/UK oppose a timeline.

³⁸ The Presidency suggests adding the following new recital (22a) "To monitor progress on the identification of the contaminated sites a timetable is needed. In enforcing this Directive, account should be taken of the fact that the identification of contaminated sites is a dynamic and continuous process as new contaminated sites may be generated. Therefore by the deadline set in this Directive the identification exercise should be almost completed and only residual sites left to be included at a later stage in accordance with the requirements for update of the inventory. It is also for this reason that the present Directive provides for such requirement."

³⁹ BG requests 9 years, EL is not convinced that a timeline is needed.

^{*} OJ L 396, 30.12.2006, p. 1.

⁴⁰ The Presidency suggests amending recital (22) as follows: "In order to successfully prevent and limit risk to human health and the environment stemming from soil contamination, Member States should identify the sites which according to their assessment are posing a significant risk in this regard. Given the number of sites which are likely to be contaminated, their identification requires a systematic step-by-step approach and should be based on a prioritisation linked to the possible presence of substances that are carcinogenic, mutagenic, toxic for reproduction, persistent, bioaccumulative and toxic, or to sensitive land uses, for instance those involving the presence of young children, pregnant women, elderly people, protected habitats or species."

Furthermore, Member States should perform the identification procedure according to the following indicative timetable: ⁴¹

- (i) within seven years from [transposition date], for at least 10% of the sites ⁴² identified in accordance with paragraph 2(a);
- (ii) within 15 years from [transposition date], for at least 60% of the sites identified in accordance with paragraph 2(a).

6. Member States shall designate the competent authorities to be responsible for the identification of sites linked to potentially soil-contaminating activities and contaminated sites. ⁴³

(Article 11: deleted)

Article 12

Soil status report

1. On a site on which an activity included in the national list established pursuant to Article 10(2)(a) is taking place, or for which the official records, such as registers, show that it has taken place, Member States shall ensure that a soil status report is made available to the competent authorities as referred to in Article 10(6):
 - by the owner of that site or the prospective buyer when the site is sold, making it also available to the other party in the transaction, and
 - by the owner of that site or a relevant third party, when there are land use changes, including development which the Member State considers relevant.
2. Without prejudice to Community and national liability regimes, the soil status report shall be issued by a body or person authorised by the Member State.

⁴¹ Cion opposes having an indicative timetable.

⁴² UK questions what 10% of an unfinished list would be and prefers to delete the timetable.

⁴³ BG: add reference to registers.

3. Member States shall decide on the information that must be included in the soil status report which may vary according to the use of the land, the size of a proposed development or any other relevant factors.

It shall contain information, including, if available, historical data, on the present and past activities on the site, the handling, the use and storage of relevant hazardous substances over time, any evidence of accidents involving the emission of relevant hazardous substances as well as the presence of human and environmental receptors that could suffer from any contamination.

As part of the soil status report, Member States may systematically require a chemical analysis for all the sites referred to in paragraph 1 ⁴⁴, determining the concentration levels of the relevant hazardous substances in the soil, limited to those substances that are linked to the activities carried out on the site. For that purpose, Member States shall establish the methodology necessary for determining those concentration levels.

4. Competent authorities shall use the information contained in soil status reports for the purpose of identifying contaminated sites in accordance with Article 10.
5. Already existing and readily available information, such as official records, on the sites referred to in paragraph 1 shall be made available upon request to the owner of the site or to the prospective buyer for the purpose of producing the soil status report.
6. Member States may establish a period of validity for the soil status report that they consider appropriate, but not longer than 10 years. During such period, the same report can be made available for successive transactions, provided that there have not been other changes which could influence the state of the soil, taking into account the intended land use.

⁴⁴ PL opposes this provision.

SECTION TWO

REMEDIATION

Article 13 *Remediation*⁴⁵

1. Member States shall ensure that the contaminated sites listed in their inventories of contaminated sites, pursuant to Article 10(4), are remediated according to paragraph 2. For that purpose, Member States shall have regard to the strategy drawn up pursuant to Article 14.

Without prejudice to the strategy drawn up pursuant to Article 14, Member States may require immediate remediation for any contaminated site and shall also ensure that, where imminent threats to human health or the environment exist, temporary and urgent measures are taken to limit or to prevent further adverse effects.

2. Remediation shall consist of actions on the soil aimed at the removal, control, containment or reduction of contaminants⁴⁶ so that the contaminated site, taking account of its current use or approved future use, no longer poses any significant risk to human health or the environment. Remediation action may consist of natural recovery. When deciding on the appropriate remediation actions, Member States shall give due consideration to social, economic and environmental impacts, cost-effectiveness and technical feasibility of the actions envisaged. In case of proven⁴⁷ risks on water resources, remediation objectives shall be established taking into consideration relevant Community water legislation.

⁴⁵ UK wishes text to express that remediation is about reducing risks, not cleaning up soil.

⁴⁶ UK requests "actions taken to ensure" instead.

⁴⁷ UK: add "significant".

3. If the means required for remediation are not technically available or only available at a disproportionate cost with respect to expected environmental benefits, sites may be conditioned in such a way that they do not pose any significant risk to human health or the environment, including by restricting access to and use of them. For the same reason [...] Member States may change the approved land use of a site to a less sensitive use ⁴⁸, provided it will not pose any significant risk to human health or the environment.
4. Where containment, natural recovery ⁴⁹, restriction of access or land use change are applied, the evolution of the risk to human health or the environment shall be monitored.
5. If not already established, and having regard to paragraph 2, Member States shall set up appropriate economic mechanisms to provide for the investigation and remediation of the contaminated sites for which, subject to the polluter pays principle, the natural or legal person responsible for the contamination cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of the investigation and remediation. ⁵⁰
6. Where, in the cases referred to above, Member States fund the investigation and remediation, they shall, where Member States consider appropriate, endeavour to recover the costs they have incurred in relation to the investigation and remedial measures taken pursuant to this Directive.

⁴⁸ IT opposes this provision.

⁴⁹ IT requests to add the term "monitored".

⁵⁰ UK prefers a simple provision allowing Member States to decide to fund remediation, in order to be able to avoid lengthy legal disputes.

Article 14
*Remediation strategy*⁵¹

1. Member States shall, on the basis of the inventory of contaminated sites and by ...^{*}, draw up a remediation strategy or strategies covering the whole of their national territory, including at least remediation targets, a prioritisation, taking particular account of significant risks to human health or the environment, a timetable and financial resources for implementation.
2. The remediation strategy shall be in application and made public by ...^{**}. It shall be reviewed at least every five years.

⁵¹ FR does not see added value in this provision.

^{*} 9 years after entry into force.

^{**} 10 years after entry into force.

Chapter IV

Awareness raising, reporting and exchange of information

Article 15

Awareness raising

Member States shall take appropriate measures to raise awareness about the importance of soil for human, biodiversity and ecosystem survival, of preventive measures for preserving soil functions, to promote the transfer of knowledge and experience for a sustainable use of soil.

Article 15a

Public participation

1. For the purposes of this Article, "the public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.
2. Member States shall ensure that the public is given early and effective opportunities to participate in the preparation, modification and review of the action programmes referred to in Article 8, of the national list of activities referred to in Article 10(2)(a), of the prioritisation referred to in Article 10(5) and the remediation strategies referred to in Article 14.

To that end, Member States shall ensure that:

- (a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for these action programmes and remediation strategies or for their modification or review and that relevant information about such proposals is made available to the public including inter alia information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted;
- (b) the public is entitled to express comments and opinions when all options are open before decisions on the action programmes and remediation strategies are made;

- (c) in making those decisions, due account shall be taken of the results of public participation;
- (d) having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.

3. Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection.

The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public to prepare and participate effectively.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation required by this Article.

4. This Article shall not apply to action programmes and remediation strategies for which a public participation procedure is carried out under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. *

* OJ L 197, 21.7.2001, p. 30.

Article 16
Reporting

1. Member States shall indicate to the Commission by ...^{*}, and every five years thereafter, how the following information to be made publicly available pursuant to this Directive can be accessed:
 - (a) the priority areas identified pursuant to Article 6(2)(c);
 - (b) the action programmes drawn up pursuant to Article 8(1);
 - (c) a national list of activities which have a significant potential to cause soil contamination drawn up pursuant to Article 10(2)(a);
 - (d) prioritisation pursuant to Article 10(5);
 - (e) the inventory of contaminated sites established pursuant to Article 10(4);
 - (f) the remediation strategy or strategies adopted pursuant to Article 14(1);
2. Furthermore, Member States shall make the following information available to the Commission in an electronic format by ...^{*}, and every five years thereafter:
 - (a) a summary of the measures taken pursuant to Article 5;
 - (b) the methodology used for identifying priority areas pursuant to Article 6(3);
 - (c) a summary containing the number of sites referred to in Article 10(2)(a) at the appropriate administrative level and specified by type of activity as well as the number of the sites fully investigated pursuant to Article 10(2) during the reporting period;

^{*} 10 years after entry into force.

- (d) metadata on priority areas identified pursuant to Article 6(2)(c) as documented digital georeferenced data in a format that can be read by a geographic information system (GIS) in accordance with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) *;
- (e) a summary of the measures taken pursuant to Article 15.

Article 17

Exchange of information

By ... **, the Commission shall set up a platform for the exchange of information between Member States and with stakeholders on the implementation of this Directive, particularly best practice for soil protection and remediation, the priority area identification pursuant to Article 6, on risk assessment methodologies for contaminated sites currently in use or under development and on funding mechanisms. ⁵²

* OJ L 108, 25.4.2007, p. 1.

** 1 year after entry into force

⁵² The Presidency suggests adding the following new recital: "To achieve the highest possible comparability of methods and data, it is recommended that Member States preferably apply methods developed by CEN (European Committee for Standardisation) or ISO (International Committee for Standardization) or other validated or verified methods developed in accordance with scientific protocols and that are appropriate for the intended purpose."

Chapter V

Final provisions

Article 18

Implementation and adaptation to technical progress

1. Annexes I and II may be adapted to technical and scientific progress. That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).
2. Where, on the basis of the exchange of information referred to in Article 17, a need for increased coherence is identified, guidelines on common technical elements for soil contamination risk assessment, not having any bearing on the risk acceptability and designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure [...] referred to in Article 19(2).
3. By ...^{*}, the necessary provisions on data and metadata quality, utilisation of historical data, methods, access, and data-exchange formats for the implementation of the provisions of Article 16 shall be adopted in accordance with the procedure referred to in Article 19(2).

[...]

^{*} 7 years after entry into force.

^{**} 5 years after entry into force.

Article 19

Committee

1. The Commission shall be assisted by a committee, hereinafter “the Committee”.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 20

Commission report

1. The Commission shall publish a first evaluation report on the implementation of this Directive within two years of receiving the action programmes and remediation strategies.

The Commission shall publish further reports every five years thereafter.

It shall submit the reports to the European Parliament and to the Council.

2. The reports provided for in paragraph 1 shall include a review of progress in the implementation of this Directive based on an assessment by the Commission based on information provided in accordance with Article 16.

Article 21

Review

The Commission shall review this Directive at the latest by ...^{*} and shall, where appropriate, propose any necessary amendments.

^{*} 15 years after entry into force.

Article 22

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by the date specified in Article 24 at the latest and shall notify it without delay of any subsequent amendment affecting them.

[Article 23 : deleted] ⁵³

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... * at the latest. **

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

⁵³ The Presidency suggests the following text for a recital: "Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage establishes that, for orphan sites, remedial action may be taken by the competent authority as a last resort. That provision is without prejudice to the general obligation laid down in this Directive to ensure that the contaminated sites identified are remediated."

* 24 months after entry into force of this Directive. EE requests 36 months.

** Recital: "In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public."

Article 25

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 26

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

<p>SECTION 1</p> <p><u>INDICATIVE</u> ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING SPECIAL PROTECTION FROM EROSION</p>
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Soil type (Soil Typological Unit (STU) level)
Soil texture (STU level): sand, silt and clay content
Topography: slope gradient and slope length
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Climate: precipitation (amount, duration, frequency and wind characteristics) ⁵⁵
Soil density properties (STU level): bulk density and packing density (can be measured or derived)
Soil hydraulic properties (STU level): infiltration rate, permeability and water retention capacity (can be measured or derived)
Total soil organic carbon (g C/kg dry matter) (STU level) (can be measured or derived)
Climate: precipitation (intensity)
Land use, including land management, farming systems and forestry
Hydrological conditions
Agro-ecological zone

⁵⁴ Some of the elements contained in this Annex can be measured or derived, for instance through modelling or the use of pedo-transfer functions, on the basis of known information and measured data.

⁵⁵ RO questions the split into two elements related to climate (elements 5 and 9).

SECTION 2

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING SPECIAL PROTECTION FROM SOIL ORGANIC MATTER DECLINE

Soil type (Soil Typological Unit (STU) level)
Total soil organic carbon (g C/kg dry matter) (STU level) (can be measured or derived)
Climate: temperature and precipitation (amount)
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Soil texture (STU level): clay content
Stock of soil organic carbon (t C/ha) (STU level) (can be measured or derived)
Topography: slope, exposure and elevation
Land use, including land management, farming systems and forestry

SECTION 3

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING SPECIAL PROTECTION FROM COMPACTION

Soil type (Soil Typological Unit (STU) level)
Topsoil (30 cm or plough layer in arable land) and subsoil texture (STU level)
Climate: temperature, precipitation (distribution) and evapotranspiration
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Total soil organic carbon (STU level) (can be measured or derived)
Topsoil and subsoil bulk density (STU level) (can be measured or derived)
Topography: slope and land form
Land use, including land management, farming systems and forestry

SECTION 4

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING SPECIAL PROTECTION FROM SALINISATION

Soil type (Soil Typological Unit (STU) level)
Soil texture (STU level): sand, silt and clay content
Irrigation areas, chemical properties (pH, nature and content of salts) of irrigated water and type of irrigation techniques
Climate: temperature, precipitation (amount) and evaporation
Soil chemical properties (STU level): pH, electric conductivity and exchangeable sodium percentage
Soil hydraulic properties (STU level): infiltration rate, hydraulic conductivity, water retention and vertical and horizontal drainage characteristics (can be measured or derived)
Groundwater information: chemical properties (pH, nature and content of salts) and depth variation
Parent material: nature and chemical composition

SECTION 5

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING SPECIAL PROTECTION FROM LANDSLIDES

Soil properties (STU level): texture and permeability (permeability can be measured or derived)
Occurrence/density of existing landslides
Topography: slope length, breaks of slope, nature of slope
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Climate: precipitation (amount, duration, frequency and intensity)
Soil type (Soil Typological Unit (STU) level)
Bedrock and overlaying deposits (lithology, geotechnical and hydrogeological characteristics, nature of soil parent material) (STU level) (can be measured or derived)
Land use, including land management, farming systems and forestry
Seismic risk

SECTION 6

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING SPECIAL PROTECTION FROM ACIDIFICATION

Soil type (Soil Typological Unit (STU) level)
Soil texture (STU level): sand, silt and clay content
Parent material: nature and chemical composition
Soil chemical properties (STU level): pH and Base saturation (can be measured or derived)
Total soil organic carbon (STU level) (can be measured or derived)
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Land use, including land management, farming systems and forestry
Climate: temperature, precipitation (amount) and evapotranspiration
Air deposition of acidifying substances

Priority indicative list of activities which have a significant potential to cause soil contamination referred to in Articles 10 and 12

1. Establishments where relevant hazardous substances are or were present in quantities equal to or in excess of the amounts indicated in Parts 1 and 2, column 2 of Annex I to Council Directive 96/82/EC (Seveso) * [...].
2. Sites where activities listed in Annex I to Council Directive 2008/01/EC, independently of the thresholds specified therein, except for the activities carried out by micro-enterprises, as defined in point 3 of Article 2 in the Annex to Commission Recommendation 2003/361/EC ** and except for the activities relative to the rearing of livestock, take or have taken place.
3. Areas in airports where use, handling and storage of significant amounts of relevant hazardous substances occurs or has occurred.
4. Land-based areas in ports where use, handling and storage of significant amounts of relevant hazardous substances occurs or has occurred.
5. Areas in former military sites where use, handling and storage of significant amounts of relevant hazardous substances has occurred.
6. Petrol and filling stations.
7. Dry cleaners.

* OJ L 10, 14.1.1997, p. 13.

** OJ L 124, 20.5.2003, p. 36.

8. Mining installations, including extractive waste facilities as covered by Directive 2006/21/EC of the European Parliament and of the Council *, but excluding waste facilities for inert waste, peat and unpolluted soil.
 9. Waste landfills as defined in Council Directive 1999/31/EC **.
 10. Waste water treatment installations.
 11. Pumping stations, transfer points, joints and areas where leaks have been reported of pipelines for the transport of hazardous substances.
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* OJ L 102, 11.4.2006, p. 15.

** OJ L 182, 16.7.1999, p. 1.