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Position Paper on the Council draft EU Framework Directive on Soil Protection

Draft

European industry recognises the valuable resource that soil represents and supports efforts to avoid damaging changes to European soils. However, it rejects the current Council draft text for a Framework Directive on Soil Protection.

Although the current proposal may contain numerous amendments as compared to the Commission draft, which in part shapes the regulation flexibly, industry remains the main addressee of the proposed provisions on contamination management so that considerable burdens are to be expected. And this despite the fact that contaminated sites, or those suspected of being contaminated, constitute only a small percentage of soils and their problem areas. The burdens to be expected are not offset by any **competitive advantages**. A regulatory framework on soil protection for the whole of Europe will not result in a competition-enhancing framework for European companies as soil protection aspects play only a minor role in investment in new business locations.

From European industry's perspective it is questionable whether regulations on soil protection should be adopted at European level. According to the principle of **subsidiarity**, the European Community may only play an active role in areas which cannot be resolved, or only unsatisfactorily so, at Member State level. According to the principle of subsidiarity, the EU right to legal initiative can therefore only apply if a certain matter can only be regulated for the entire European Community. European industry highlights the importance of soil protection and supports policy-makers in their efforts to prevent damaging soil changes and remediate sites already contaminated. However, in particular remediation of contamination has to be conducted in close proximity to the site concerned and must take local circumstances into account, as well as present use and/or subsequent use. The more than 300 different types of soil in Europe reflect the enormous regional differences. The fact that soil protection is not adequately regulated in some Member States does not give the EU the right to adopt a Framework Directive on Soil Protection whilst violating the subsidiarity principle. Soil protection must be regulated at national level.

One feature of the subsidiarity principle is that the Community is only allowed to use measures which do not go beyond what is necessary to achieve the objective. This means first and foremost that no inappropriate administrative efforts should be undertaken. A new EU Framework Directive on Soil Protection would cause massive setbacks to the efforts to **deregulate and cut red tape** as the draft framework envisages additional costly and unnecessary reporting obligations for industry. In



addition, the EU Directive on Soil Protection counteracts the European Community's efforts to achieve "better regulation".

The Council draft text should also be rejected because it does not take two of industry's main points of criticism into account. Thus the sale of land would be considerably more difficult as a result of the proposed introduction of a **Soil Status Report**. A Soil Status Report must be made upon sale of land and be presented to the purchaser and possibly also to an authorised body or person. It is industry's opinion that the involvement of environmental authorities in private property transactions should in particular be rejected as they interfere with freedom of contract of the parties concerned. In addition, private law already offers sufficient scope for an appropriate balance of interests of the parties involved. The envisaged Soil Status Report will also make the marketing of land and in particular the remediation of commercially used land considerably more difficult as well as impose restrictions. This would mean that land usage could not be reduced, and that it must be feared that new commercial areas will be identified for fear of bureaucratic hurdles in the case of a change of use of existing commercial sites.

The Council draft text also creates a **general suspicion** of approved commercial and industrial installations and activities. This is not acceptable to European industry. Especially companies which already possess a permit in accordance with European and national environmental law come under suspicion of contamination with every single installation already approved. Within the framework of the approval procedures, proof of environmental measures and the monitoring necessary to prevent soil contamination already has to be submitted. In addition, regular controls are conducted by the authorities responsible for soil protection. The procedural costs of the new regulations are not commensurate to the benefit for the environment; on the contrary, there is a danger of duplicate registration and inspections without any ecological value added.
