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Subject : **Soil protection**

- **Thematic Strategy for Soil Protection**
  - Proposal for a **Directive** of the European Parliament and of the Council establishing a framework for the **protection of soil** and amending Directive 2004/35/EC
  - = Policy debate at Council (Environment) on 20 February 2007
    - Written contributions from delegations
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In reply to questions by the Presidency (6069/07), delegations will find annexed written contributions from BE/BG/DK/ES/FR/CY/LV/HU/PL/SK.

## BELGIUM

### 1. What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?

The Thematic Strategy is a cautious step towards putting harmonised soil protection on the agenda of all Member States and creating a **level playing field** while offering a sufficiently **flexible** approach and avoiding an unrealistic level of effort. It takes into account the results of years of work in different working groups in close collaboration between the Member States, the Commission and all stakeholders concerned.

Soil protection has for many years been the missing link in European environmental policies. Soil degradation continues and existing legislation does not provide the coherent soil protection policy needed to cover all soils and all soil threats. The proposed Framework Directive provides the long-awaited **frame** for soil protection in a sufficiently flexible way.

In general, the proposed Framework Directive can be an efficient instrument if the proposed measures are realistic and feasible for all Member States.

The use of a **risk-based approach** for the assessment of soil contamination is a very positive element in the proposed Framework Directive. In view of the enormous diversity in soils, climate, land-use and culture, it is not feasible to set common threshold levels for all Member States.

To improve the efficiency of soil protection in the long run, there should be **more focus on prevention of diffuse contamination** in the Framework Directive. Without a more detailed section on diffuse contamination, the Framework Directive seems somehow unbalanced.

The **platform for exchange of information** will improve both consistency and cost-efficiency.

### 2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?

In general, the way in which **soil contamination and remediation** are approached is evaluated positively. However, in certain articles there are many details which could, with time, oblige certain Member States to overturn soil remediation systems already in use to comply with the proposed Framework Directive, which is not acceptable. We are confident that with some text amendments these problems can be overcome.

We are concerned about the **inventory of contaminated sites** which has to be **finished in 5 years**. From experience in Belgium we have learned that this is completely unrealistic. Present-day activities could be added to a database within 5 years, but historical activities are often very hard to trace. It would be more logical to consider this inventory as a living, growing dataset to which data are systematically added when data become available, for example as the result of soil status reports. The progress in completing the dataset can be reported periodically (every 5 years) to the Commission.

We wonder whether the **polluter pays principle** would be correctly applied if Member States measured the concentrations of dangerous substances in contaminated sites. In our opinion it would be more logical for the competent authorities to organise the whole process of drawing up and transmitting soil status reports and adding data to the inventory, but not to measure concentrations themselves. In other words, the competent authorities would **rely on the information gathered through soil status reports**. It would be against the polluter pays principle if the Member States had to carry the costs of measuring dangerous substances for all sites in the inventory.

It is important that cross-compliance measures already in place in the context of the Common Agricultural Policy do not have to be changed to comply with this Framework Directive. It is our concern that measures applicable to farmers who have to take cross-compliance into account can be presented to the farmers as one package in the framework of cross-compliance. The integration of soil protection and agriculture can be very important in so far as it ensures a consistent and clear policy towards farmers without creating additional administrative burdens.

As regards the **impact assessment** of sectoral policies on soil degradation processes (art. 3), the scope and consistency with Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment should be clarified. **Soil biodiversity** is mentioned in the Strategy, but there are no commitments on soil biodiversity in the Framework Directive. In **Annex 1** there are too many details. Some parameters are not relevant for the aim and level of detail of this proposal. We are very positive about installing a **platform for information exchange**. However, we would like to broaden the scope of this platform from risk area identification and risk assessment methodologies to include information exchange on possible measures to be included in programmes of measures and national remediation strategies.

### **3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

There should be a clear cross-fertilization between Community action on **waste**, especially organic wastes, but also excavated soils, to be applied to soils, and the Framework Directive.

The need to integrate soil into other sectoral and thematic environmental policies is noted in the actual text of the proposed Directive, but the burden is put entirely on the shoulders of the Member States in the framework of the transposition of the various Directives relating to these other policies. Thus, if we examine and combine the texts of Directives such as the Framework Directive on wastes (75/442/CE), the future new Framework Directive on wastes under discussion and Directive 2004/35 on environmental liability with the proposed Framework Directive on soil protection, the reading of the legal constraints appears sometimes contradictory and whole sections formerly covered by the wastes Directive and its jurisprudence, which are to disappear, will vanish.

To this end, we would like to see a more detailed proposal on the **prevention of diffuse soil contamination**. This would include a framework for organic waste and sludge depositions on soils. It is important to fine tune the proposal for a Framework Directive with the Community action on **agriculture** to achieve a consistent policy towards farmers at European and local level. In the framework of cross-compliance, farmers are already obliged to take action against erosion, organic matter decline and compaction. However, these obligations only apply to the fields of farmers who receive payments. The Framework Directive should have added value and include all soils, thus creating a level playing field. Implementing the Framework Directive will require programmes of measures to be drawn up. In so far as additional measures towards farmers are necessary, it is important that they should not lead to additional burdens above what is necessitated by the system of cross-compliance.

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## BULGARIA

### **1. What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**

Bulgaria fully supports and welcomes the European Commission's initiative to develop a legally binding framework relating to the protection and sustainable use of soils at EU level. In this respect we consider that:

- Setting soil-related concerns high on the EU agenda, or at least at the same level as the other environmental media (air and water) is finally a fact that could ensure the protection of this limited, irreplaceable and irrecoverable natural resource.
- The proposed Strategy and draft Directive on soil establish the framework for certain harmonized actions needed at European level.
- Main threats have been identified and measures for the protection and recovery of soil functions have been considered and proposed.
- The main elements included in the Directive (integration into sectoral policies, preventive measures, identification of risk zones and polluted sites, development of programmes with measures, development of national strategies for recovery of soils, as well as exchange of information, reporting and public involvement in the decision-making process), represent in our view a guarantee that the objectives envisaged in the Strategy will be achieved.
- A strong aspect of the draft Directive that we appreciate is that, while establishing a European framework for soil protection, it leaves quite a substantial degree of flexibility for the measures to be taken by Member States in accordance with local conditions.
- We believe that the right approach towards protecting this component of the environment has been established at EU level with the Thematic Strategy on soil protection, and that the Framework Directive is the most appropriate instrument to implement the conception envisaged in the Strategy.

### **2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**

Bulgaria shares the opinion of those Member States which believe that acidification should be included in the listed soil degradation processes. Even though Bulgaria does not count acidification as one of the most significant threats as far as soil state in the country is concerned, it does exist and should be properly addressed. Moreover, if acidification represents a serious problem in a number of Member States, it should be addressed at European level on an equal footing with the other degradation processes, and common elements for assessment should be adopted.

Our main (cost-related) concerns relate to funding of "orphan" sites and the remediation of existing damage (with which we already have quite a lot of experience), and to the drawing up of the soil status reports.

Bulgaria would also appreciate an explanation by the Commission of the reasons behind excluding *soil excavation* resulting from mining, quarrying and road-building activities from the list of soil degradation processes. We are of the opinion that soil excavation represents a threat to soil which is common to all Member States, and the recently adopted Directive 2006/21 EC on the management of waste from extractive industries does not fully address it from a soil protection perspective. We asked this question at the Working Party meeting in January, but did not get any answer.

**3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

Bulgaria's view is that the proposed Thematic Strategy and the draft Framework Directive complement the EU legal instruments in force and fill an important gap in European environmental legislation. With this purpose a review was conducted of a number of "acquis" (the Water Framework Directive, the Environmental Liability Directive, the IPPC Directive, the Landfills Directive etc.).

Bulgaria considers that the proposed Thematic Strategy and Framework Directive on soil are in compliance with the EU sectoral policies in the field of the environment, and contribute to the establishment of a flexible legal framework for the protection of a unique natural resource.

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## DENMARK

- 1. What are the main strong points /added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**

Denmark welcomes the soil thematic strategy and the accompanying proposal for a Framework Directive on soil protection as a sound basis for coordinated EU efforts to promote sustainable use of soil and protect the capacity of soil to perform its broad variety of crucial functions. Such common efforts are considered important primarily for health and environmental reasons but also for the functioning of the internal market.

Protection of soil and remediation of contaminated sites is a predominantly national responsibility. The main added value of the Framework Directive is therefore that it requires that over a period of time rather detailed common knowledge relating to the magnitude and distribution of soil damage and soil contamination be established at European level. Action on and specific solutions to the problems exposed are rightly left to Member States.

- 2. Are there any areas of potential concerns in terms of scope, requirements and implementation of the proposed draft Directive?**

Denmark already has well-established legislation regarding investigation and remediation of contaminated sites and can support the Directive's proposal concerning establishment of a list of contaminated sites and a national remediation strategy.

However the rules regarding how this list is established should be more flexible, e.g. giving Member States the possibility of deciding when chemical analyses are necessary. Also room for national flexibility is missing with regard to the proposed requirements for "status reports" when potentially contaminated sites are bought and sold.

Finally it is important for Denmark that it be left to Member States to establish the criteria for risk assessments of contaminated sites and on that basis to decide if remediation is necessary and how this should be carried out.

**3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

Denmark does not consider that the strategy and the Framework Directive are in conflict with or overlap unnecessarily with existing EU regulations in corresponding fields. Rather the Commission proposals are seen as providing the necessary broad foundation of knowledge and initiatives to spur co-ordinated efforts by EU Member States to protect and improve the quality of soil with due respect for national geographical and regulatory variations and needs.

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## SPAIN

Spain supports this Strategy and also the existence of a Directive on soil protection, because we think that this element in the environment is the only one that does not yet benefit from adequate protection status at European Union level, although it is a key natural resource for human well-being and life support.

Without providing for this obvious need, it is not possible to fulfil the EU's objective of establishing a high level of protection and improvement of the environment as stated in our Treaty.

The soil needs protection. That is an undisputed fact, and this protection can only be effectively achieved at European Union level. In fact, without the European Union framework, the steps taken by Member States would be much more inefficient, the internal market would suffer, as was already pointed out by this Council in 2002 and, besides that, transboundary issues (such as pollution, erosion and siltation) could not be properly tackled. We also think that soil protection is key to achieving the objective of the protection and sustainable use of natural resources, including especially biodiversity.

The proposal for a Directive submitted by the Commission constitutes a good basis on which to start the discussion and has important and original aspects, although at the same time it is too flexible and it does not have clear targets and timetables. We also think that the principle of subsidiarity is clearly incorporated in the text.

**1. What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**

As a main positive element, the proposed Strategy and Directive introduce a comprehensive definition of all the environmental, economic, social and cultural functions of soil and, correspondingly, an integrated consideration of the major threats affecting soils in the Community. This is a fundamental point when we are dealing with a resource like soil which supports all human activities, and in such a diverse territory as Europe. The consideration of sustainability as main objective requires a coordinated and integral treatment of the soil resource, also incorporating the objective of soil protection into the sectoral policies that affect soil (nearly all of them), as a way to prevent problems that afterwards are difficult to remedy.

As far as sealing is concerned, we regard its inclusion in the Directive and the requirement that Member States take measures for its limitation as very positive. Land cover by artificial surfaces has become a serious problem on a disproportionate and unsustainable scale in recent years in Spain and other Community countries. The inclusion of sealing as a threat for soils in the Directive can contribute to strengthening the territorial planning strategies that are needed to set limits on this crucial challenge for sustainability.

Another strong point is the proposed method for treating the problems of soil degradation contained in erosion, organic matter decline, compaction, salinisation and landslides, as well as contamination, starting with the identification of risk areas for the first group and the inventory of contaminated sites for the last problem. Improving diagnosis is the first logical step towards effective protection. In this way, programmes of measures and remediation will be based on a sound knowledge of the starting point.

The insistence on prevention and precautionary measures, particularly with respect to the issue of soil contamination, is also very important. Identification and remediation are costly, so the best policy is always prevention.

In summary, the proposed Directive constitutes a good framework for Community action on soil protection. It provides an objective of long term sustainability and a step by step methodology that leaves considerable leeway for Member States to apply risk assessment and establish programmes of measures. The Directive will encourage and give coherence to actions already existing at national level, shaping a framework that will make it possible gradually to improve our knowledge about soil problems and the best strategies for their solution.

## **2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**

In general, the proposed Directive is well-balanced, although discussion of the actual text will help to improve it.

It is likely that the tasks of identifying risk areas and contaminated sites and the necessary remediation measures will entail considerable human and economic resources. We should not discard the possibility of being able to count on Community support for these tasks, in cases of more serious and large-scale degradation. However, the benefits of protecting and recovering European soils and using them sustainably are also significant.

On some aspects a greater level of compromise in the actions left for Member States to implement might have been advisable. For instance, a certain degree of harmonisation of the information on the state and evolution of soils in the Community is appropriate. We hope that the increasing information exchange on soil problems that the Directive will generate will lead to more integrated diagnosis and actions at the European level.

Soil biodiversity has been left out of the proposed Directive. The reasons for that decision are well understood, given the insufficient knowledge on the topic. However, as the Strategy progresses it might become advisable to introduce it in the future.

**3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in and contribute to Community action in relation to other environmental policies and sectoral areas?**

The proposed Thematic Strategy and draft Directive form an essential part of the overall picture of Community regulations and actions aimed at the protection of the environment and the conservation and sustainable use of natural resources.

Thus the existing framework for water, air and biodiversity protection would be completed, while many synergies and complementarities could be found between these fields and soil protection. Some examples are: measures to combat erosion and compaction contribute to improving water management and quality and could be integrated into the river basin management plans established by the Water Framework Directive. Measures against soil contamination also improve the quality of underground water. The Common Agricultural Policy and the Rural Development Policy also promote soil protection as a basic condition for the sustainability of rural areas. The Thematic Strategy on waste prevention and recycling is also contributing to the prevention of soil contamination through an adequate management of hazardous waste.

The contribution of this Strategy to the policy on global environmental challenges deserves a special mention. Avoiding organic matter decline in soils means conserving the soil carbon reservoir and thus contributes to Community climate policy.

There is an even more direct link with the problem of desertification, which is the subject of the UN Convention to Combat Desertification, ratified by the Community and Member States. The proposed Directive highlights a number of causes of soil degradation (erosion, organic matter decline, compaction and salinisation) that, when present in zones with an arid, semi-arid or dry sub-humid climate, are components of desertification.

There are 14 countries in the EU regarded as affected by desertification and included in two annexes to the Convention for the Northern Mediterranean and Central and Eastern Europe: Bulgaria, Cyprus, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovak Republic, Slovenia and Spain (as well as France as an observer in the Northern Mediterranean annex). Affected countries have to establish their National Action Programme to combat desertification in accordance with the Convention.

The proposed Directive acknowledges in its explanatory memorandum and preamble the contribution it is making to the combating of desertification in Community territory. The new Directive will considerably strengthen the Community position in relation to the Convention, give vital encouragement to the affected Member States to finish drawing up their national action programmes and reinforce the implementation of these programmes.

A clear complementarity exists between national action programmes against desertification and the EU Thematic Strategy, corresponding in this manner to the spirit of the Directive by promoting its aims in a flexible way, leaving it to Member States to draw up their programmes of measures and recommending the use, to the extent possible, of existing instruments and programmes.

Finally, we could also find points of convergence between this Strategy and the Territorial Agenda for the EU, a process of informal concertation among Member States and the Commission in favour of a territorially diverse Europe which is more competitive and sustainable. One of the territorial challenges identified is uncontrolled urban growth, known as urban sprawl. Measures to limit soil sealing brought about by the new Directive should contribute to the mitigation of this challenge to the European territory.

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## FRANCE

- 1. What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**
- 2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**
- 3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

Following on from concerns about water and air, interest in the state of soils has considerably increased in recent years, particularly in the context of sustainable land management. Operations to gather and make publicly available information about areas at risk, or about sites where potentially polluting activities have taken place, are a particularly positive aspect of which France has considerable experience.

France therefore supports the proposal for a Thematic Strategy on soils, which would raise awareness and enable soil protection policies to be put in place.

However, both at national and at Community level, this strategy must form part of the body of laws concerning other areas, in particular health rules and the prevention of pollution (IPPC).

We know from experience that the effective and proportionate management of potentially polluted sites must be based on risk management according to use. For example, along the lines of the IPPC Directive, it would be necessary to determine thresholds for activities which would require a site assessment. All this work, particularly the inventories, requires time, and the deadlines given are much too short. Besides, systematically carrying out soil assessments does not seem to us to guarantee that resources will be allocated where they are most needed.

The costs of implementing the Directive may prove enormous, as discussions on the impact study have shown and, as it stands, the text does not appear to guarantee the best possible allocation of funding to those areas which need it most. It is therefore important that the text should be clarified to make risk management according to use the central point of the management of potentially contaminated sites, and to justify the flow of information to the Commission properly.

In conclusion, France welcomes the Thematic Strategy on soils presented by the Commission. The associated Directive, particularly in the section on soil contamination, needs to be developed in order to be acceptable. In particular, it should be better integrated with other European and national rules in the health and pollution prevention areas. Finally, it must show greater respect for the principles of proportionality and subsidiarity.

## CYPRUS

### **1. What are the main strong points / added value of the Proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed Framework Directive manage to fulfil that objective?**

Cyprus supports the Thematic Strategy for Soil Protection as well as the proposed Directive that will partly implement the main objectives of the Strategy. One of the most important strong points of the Thematic Strategy is that it gives a comprehensive EU view on the issue of soil protection and sustainable use.

Referring to the Thematic Strategy, it is very important that soil protection is integrated into the formulation and implementation of other national and Community policies, since it is an issue that should be dealt with in different policy areas, such as agriculture, forestry, regional development, and transport. In addition, it is vital to promote the implementation of the Framework Directive for soil protection since it is the only EU legal instrument solely designed for this purpose. We are in favour of continuing and increasing research in areas in which there are recognized knowledge gaps. Issues such as processes underlying soil functions, spatial and temporal changes in soil processes and technologies for soil protection and restoration need to be studied further. Last but not least, we support activities related to public awareness regarding the need to protect soil within the EU, but also at the international level. Special attention should also be given to the links with the United Nations Convention to Combat Desertification and the common areas of action that can be identified.

Secondly, given the actions involved, when the proposed Directive is adopted and implemented, it will manage to fulfil the objectives of the Thematic Strategy. It is important for Cyprus that the Directive include activities for identifying areas at risk based on the different threats using common criteria, but Member States should be in a position to propose additional threats for their specific circumstances, such as the threat of uncontrolled development. We also support the proposed approach allowing a Member State to establish risk acceptability in order to finally identify an area at risk. It is of vital importance to preserve and respect the subsidiarity principle as well as the proportionality principle, since Member States such as Cyprus with special climatic, geographical and administrative conditions will be able to adapt the Framework Directive to fit their needs.

**2. Are there any areas of potential concern in terms of scope, requirements, and implementation of the proposed draft Directive?**

The main scope of the proposed Directive is to ensure the protection of soil and its sustainable use, which finds Cyprus in total agreement. Regarding the actions proposed, there are certain issues that need to be further analysed in relation to their feasibility and practicability, also taking into consideration the principles of subsidiarity and proportionality. The implementation of the Directive means an additional financial and administrative burden on the Member States, an issue that needs to be further analysed and alternative solutions proposed. Also, we are studying very carefully the timetable proposed for the different commitments and there should be more discussion on this issue. There should also be a thorough analysis of the overlaps that may exist between this proposed Directive and other legal acts that have already incorporated issues regarding soil protection so as to avoid duplication of work and contradictions.

**3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

Soil degradation is a major issue in all EU Member States, although there are a variety of different threats depending on their special circumstances. The importance of soil protection, its sustainable use, and the need to further prevent soil degradation was emphasized in the Sixth Environment Action Programme. Many Member States had, on many occasions, urged the Commission to complete and present its Thematic Strategy. Moreover, some Member States have already gone ahead and completed their own specific legislation on soil protection.

It is vital to increase efforts in order to incorporate the issue of soil protection into community action in relation to other environmental policies and sectoral areas. Different Community policies can contribute to soil protection, especially policies regarding environmental and agricultural issues.

The Thematic Strategy can contribute to the integration of soil issues in other environmental policies such as waste, water, air, climate change, chemicals, flooding, biodiversity and environmental liability and interlink them in such a way that they will be regulated for quality. Soil protection should also be integrated into national and community policies. Most importantly, the adoption of a Framework Directive solely dedicated to soil protection is the strongest tool for ensuring the sustainable use of soil and its protection.

## LATVIA

### **1. What are the main strong points/added value of the proposed Thematic Strategy and draft Framework Directive on soil protection with their objective of creating a common framework for consolidating protection and more sustainable use of soils across the EU?**

The Thematic Strategy and Proposal for a Directive on soil protection have added value as EU-level legislation complementary to national and local actions: they identify clearly various degradation processes and threats soil is subject to and call on the Member states to take action to identify risk areas and draw up programmes of measures. Since there is no specific Community legislation on soil protection yet, the proposed Directive will be a useful tool to provide protection and ensure sustainable use of soil.

### **2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**

Unfortunately soil acidification – a very important threat for soil in several Member States, including Latvia - is missing from the proposed Directive. Approximately 50% of agricultural land is affected by acidification in Latvia. Soil acidification has a negative effect on yield as well as on biodiversity. Accordingly, acidification should be considered as soil degradation and should be included in the proposed Directive.

Although soil functions and threats are listed in the introductory articles of the proposed Directive, the subsequent text of the proposal mostly deals with contaminated sites and their remediation. The proposal could devote more attention to the soil as a resource.

Concerns arise about possible duplication between existing Directives (96/61/EC; 96/82/EC; 1999/31/EC; 2004/35/EC) and the proposal. This could result in duplication of certain provisions concerning identification of contaminated sites and reporting to the European Commission. A clear distinction must be made between the scope of existing Directives and the proposed soil protection Directive.

Concerns arise also about remediation of historically contaminated sites, including former military sites. It is not possible to apply the “polluter pays” principle to such sites. In the case of Latvia, historically contaminated sites could be the result of collective farming during the Soviet period, but military sites are inherited from the Soviet Army.

**3. How do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental media and areas (such as air, water, or climate change mitigation and biodiversity)?**

The proposed Directive fits in with and contributes to existing Community environmental legislation. The proposed Directive could fill the gaps between existing Directives. Protection and remediation of soil will contribute to achieving the objectives of the Water Framework Directive (2000/60EC) and the Groundwater Directive (2006/118/EC) because soil quality has an influence on quality of surface water and groundwater. It is impossible to provide protection of groundwater without protection of the soil. The proposed Directive deals with historically contaminated sites too; however, we should bear in mind the problem of funding for remediation measures.

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## HUNGARY

### **1) What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**

Soil is essentially a non-renewable, dynamic and multifunctional natural resource for human activities and ecosystems. We all agree that soil degradation has not been adequately tackled in the Community; the measures taken by individual Member States have not been effective in stopping soil degradation. This is the main reason why Hungary agrees that actions at EU level are needed. The Soil Thematic Strategy is a good basis for an efficient soil protection policy, though the Strategy's objectives could hardly be met without binding rules at Community level. Hungary is convinced that the objective level playing field in conflicting areas, e.g. competitiveness and food safety, requires soil legislation at EU level. This need also stems from the transboundary effects and the close interrelation of soil with other environmental media, i.e. water and air. The approach of the proposed Framework Directive chosen by the Commission provides adequate flexibility to Member States, hence the principle of subsidiarity is ensured.

All soil protection problems considered by the Commission, as well as others such as acidification, occur in Hungary so EU-level legislation may help national authorities to tackle these problems.

### **2) Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**

Hungary considers the proposed soil Framework Directive a good starting point for discussion. In terms of general scope we do not have concerns as each Member State is free to select its level of ambition and the specific measures to reach its goals.

However, we do have concerns about some specific measures in the proposed legislation and we feel that some issues are not properly addressed in the proposal.

According to Article 23 of the proposal, remedial measures have to be taken regardless of whether the operator/owner of the land is able or willing to comply with its obligations or not. We believe that this provision puts an undue burden on public authorities and may be in contradiction with the 'polluter pays principle'. Remediation of contaminated sites should be the obligation of the polluter/operator/owner of the site.

Hungary believes that diffuse pollution deserves more accurate regulation in the Directive. Sealing measures entail considerable work and costs, in particular for Member States with large-scale infrastructure developments in progress. Differentiation according to national characteristics is necessary. Implementation of the soil strategy and compliance with the proposed Directive require proper funding both at Member State and EU levels.

**3) Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

Hungary agrees with the Thematic Strategy in seeking a better integration of soil aspects into other policy areas, such as in product policy to prevent contamination of soil. The proposed Directive should reflect this aim as well. Consistency with EU water legislation, in particular with the Water Framework Directive and the Directive on groundwater protection is of paramount importance. Deadlines therefore need to be set in the soil Directive, as there are technical and economic reasons for coordinated implementation of measures for remediation of groundwater and the affected contaminated soil. Hungary believes there is also a need for better consistency with waste legislation.

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## POLAND

### **1. What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**

The Strategy for Soil Protection in Europe and the Soil Framework Directive will have a positive effect on the issue of soil protection in the Community. They establish a uniform framework for addressing the issue in all the Member States, considering the importance of the various roles played by soils in the environment, as well as the economic and social aspects. It is also an important point that they do not introduce the same qualitative and quantitative standards for all the Member States.

We believe that these documents will certainly contribute to mobilising the States which pay less attention to the issue of soil protection. This will contribute to ensuring equal opportunities for entrepreneurs in the Common European Market by imposing the same environmental costs on entrepreneurs in all the Member States. The implementation of the provisions of the documents in question will also have a positive effect on the issue of food safety. Moreover, the fact that the issue of soil protection will be subject to a form of Community legislation, i.e. a Directive, will enhance the significance of this issue in the Member States and allow for larger resources to be allocated from the budget to actions for soil protection (as the measures under Community acts are priorities for financing)

The submitted draft Framework Directive fully meets the objectives of the Strategy for Soil Protection in Europe. However, the specific provisions of the articles of the Directive need some further elaboration.

Indeed, it should be borne in mind that implementation of the Strategy and the Directive should be preceded by a systematic assessment of the extent to which existing EU legislation on soil has contributed to rational soil use. Only the results of this action can provide a basis for developing new legislation if existing legislation is not sufficient.

### **2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**

Despite its general nature, the Directive imposes on Member States a number of obligations in respect of identifying risk areas and subsequently taking action to counteract the related processes. This will certainly require substantial work and financial resources, which, to some extent, will be a burden on the state budget (which is now difficult to estimate).

Given the specific nature of the soil environment and the manner of its development, the full identification of risk areas (Article 6) by all the Member States is not completely justified (the risk of the occurrence of particular threats in the countries in the Community varies). It would be more reasonable as a starting point for each of the Member States to prepare the so-called **“inception report”**, identifying the risk levels in relation to particular threats. On this basis, they would be prioritised, and subsequently the risk areas would be inventoried and programmes of measures would be drafted. Such an approach would reduce the financial outlays to the minimum necessary.

The proposal for a Directive identifies basic threats of soil degradation, such as: erosion, loss of soil's organic matter, soil salinity, soil density and landslips. It has to be clearly noted that despite consideration of a broad list of threats, the Directive omits the phenomenon of soil acidification, which constitutes one of the major factors influencing soil quality in many Member States, impacting the ecosystemic and productive functions of soils in significant areas. In Poland and other countries of the region, acid and strongly acid soils occupy up to 60% of farmlands. A problem particularly of light soils, which dominate in the region, degradation through acidification requires the development and implementation of proper national programmes, utilising the framework provided by the Strategy for soil protection and by the Directive. The attempt to maintain a balance of ecosystems and effectively protect the multi-functional character of soils justifies recognition of soil acidification as an important threat, equal to other factors mentioned in the document.

In Poland's opinion, the Directive should cover the issue of the loss of soil's biological diversity. We would like to emphasise that the decline in biological diversity proves the high biological efficiency of soil and is a measure of its status in spite of changes occurring therein. The higher the biological diversity of soil and the more evenly biomass is distributed in the soil profile, the more biologically efficient and the less degraded soil will be.

We do believe that there will be an opportunity to supplement the document by including the component of the loss in soil biological diversity as further work develops and the exchange of experience progresses.

The timetable for the implementation of the measures under the Directive also needs to be revised. As an example, in accordance with Article 8 (4), Member States should adopt programmes of measures for the areas identified as those where risks to soil occur (Article 6) in order to combat these risks within 7 years from the transposition of the Directive. Subsequently, within 8 years from transposition, these programmes should already be in force. In turn, Article 16, containing the requirements for reporting to the European Commission, imposes on Member States the obligation to submit to the Commission, after 8 years from the transposition of the Directive, a report containing e.g. an assessment of the efficiency of these programmes. The proposed deadlines are not logical, since after 1 year it is difficult to assess the efficiency of any programmes designed to improve soil quality or reduce the risk of the occurrence of any threats, given the fact that processes in soil unfold relatively slowly. In the light of this, the efficiency of the programmes should be evaluated no sooner than 5 years from their implementation.

An example of the substantial burden on the States is also the obligation to carry out measurements of the concentrations of pollutants for all the identified areas where a potentially soil-polluting activity (from Annex II) is carried out, as referred to in Article 11 (3). In order to reduce the costs which the Member States will have to incur, it would be well-advised to limit the list of the areas covered by the obligation to perform measurements on the areas in respect of which there is a suspicion that a risk to the environment may be present, based on information available, preliminary studies, risk analyses etc.

**3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

With respect to action in the area of environmental protection, we believe that implementation of the obligations under the draft Directive will also contribute to strengthening the implementation of the measures under the Convention on Biodiversity and the Convention to Combat Desertification.

It should be emphasised that the submitted documents make a significant contribution to the wider integration of the soil protection aspect into sectoral policies which may affect the process of soil degradation.

## SLOVAKIA

- 1. What are the main strong points/added value of the proposed Thematic Strategy with its objective of creating a consolidated and more sustainable use of soils across the EU, and how efficiently does the proposed draft Framework Directive manage to fulfil that objective?**

The Thematic Strategy creates an expert and political framework for a consolidated solution to the problems of soil protection throughout the EU. It reduces territorial differences in soil protection, empowers Member States to defend their interests in the protection of soil and facilitates improved communication and harmonisation between Member states in the use of soil.

A major benefit of the Strategy is the interest in protection not only for the productive but also for the non-productive function of soil, creating the basic conditions for life throughout the EU. Acceptance of the Framework Directive will bring about increased mobility and transparency of information on the condition of soil in EU Member States and thereby also increase environmental transparency within the EU. The Directive will make a major contribution to the implementation of other EU documents focussing on the protection of the natural environment, in particular the protection of water and air.

- 2. Are there any areas of potential concern in terms of scope, requirements and implementation of the proposed draft Directive?**

The Thematic Strategy was proposed with the good intention of supporting the protection of soil throughout the EU. Objectively we must say that there are professional and group interests for which the Thematic Strategy is less welcome. On the other hand, the activities for soil protection presented in the Strategy are in accordance with the general civil and social interests of the EU, which is why the Strategy deserves support. It will be necessary to pay attention to the opinions and standpoints of farmers, their associations and professional groups. It is also necessary to listen to the opinions of soil users.

**3. Do the proposed Thematic Strategy and draft Framework Directive on soil protection fit in with and contribute to Community action in relation to other environmental policies and sectoral areas?**

Soil is an integral part of the natural environment, on which it depends and which it influences at the same time. The protection of water, air, flora and fauna and other parts of the natural environment cannot be achieved without soil protection. For this reason the Thematic Strategy is of critical importance for the requirements of the Framework Directive on Water and the Directive on Underground Water and other documents relating to the protection of the air, biodiversity etc. It must be said that the Framework Directive on the protection of soil will be closely linked to the performance of the Directive on Environmental Responsibility. This leads to a real expectation of increased cooperation and harmonisation for all participants in the protection of the natural environment, and therefore also a higher level of regulation in the Community.

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