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**NOTE**

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from : General Secretariat  
to : Delegations

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Subject : 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  
– Progress report/Presidency briefing

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Delegations will find in annex information provided by the Presidency in connection with the above proposal for a Directive. The Environment Council will examine it under Other business at its meeting on 20 and 21 October 2008.

Note

**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**

In order to combat phenomena that cause soil degradation identified in its communication of 16 April 2002 entitled "*Towards a Thematic Strategy on Soil Protection*" and to prevent their becoming more serious, the Commission adopted a proposal for a Directive on 22 September 2006. According to the Commission, that framework Directive will make it possible to create the bases for a specific Community arrangement that guarantees the sustainable use of the soil and prevents distortions of competition caused by widely differing national systems.

*Inter alia*, the draft Directive provides for the identification of areas exposed to risks of erosion, organic matter decline, compaction, salinisation, landslides or acidification. For all the areas identified the Member States will have to adopt programmes of measures to preserve the soil. Those programmes must include at least risk reduction targets, appropriate measures to reach those targets, timetables for the implementation of those measures and estimates of the allocation of the public or private financial resources necessary for their implementation. The draft also provides for the establishment of an exhaustive inventory of polluted sites and the preparation of national strategies for the rehabilitation of the polluted sites identified. Rehabilitation must be carried out in accordance with a progressive timetable and arrangements for raising awareness and providing information must be put in place.

The proceedings of the Council Working Party on the Environment, which began under Finland's Presidency and were continued under Germany's and particularly Portugal's, have shown that this legislative draft raised a large number of questions for delegations. The discussion at the Environment Council meeting in December 2007 did not result in political agreement for lack of a qualified majority; Germany, France, the Netherlands, Austria and the United Kingdom indicated that they were not prepared to join a qualified majority. Slovenia's Presidency did not put the matter on the Council's agenda.

In addition, the European Parliament adopted the proposal for a Directive at first reading on 13 November 2007, insisting on the need to protect soil against the adverse effects of climate change, and a motion pointing to a lack of consistency and calling for more time in which to examine different options was rejected. When the absence of a qualified majority in the Council in December 2007 was established, the European Parliament asked the Council to state its intentions. On 4 September 2008 the French Presidency was able to state the French Presidency's intention of putting the matter on the agenda again.

Further to technical consultations with experts, the French Presidency has submitted a new text, which was examined at the meeting of the Council Working Party on the Environment on 19 September 2008. The new text incorporates the work done under Portugal's Presidency but is open to negotiation, in particular as regards the Member States' scope for manoeuvre. The Presidency's objective is to propose a framework that takes into account the common features of the various methodologies used in the Member States. The main new components of the new text concern:

- the introduction of priority action programmes that make it possible to target the identification and investigation of the sites considered the most sensitive by each State;
- a more systematic approach rather than a very prescriptive methodology;
- greater coordination with existing Community instruments;
- the introduction of new definitions;
- the enhancement of risk management according to the use in connection with the inventory and the submission of soil status reports;
- insistence on the obligation to inform the public.

The Presidency has taken note of the technical and legal questions that its proposal continues to raise at the Commission and with certain Member States. In particular, it has noted the positions of certain Member States on the need for subsidiarity, the costs of implementing the measures proposed, the administrative burdens created and the lack of consistency with existing Community instruments. Other Member States have stressed the danger of an exaggerated level of subsidiarity and the fact that there is no timetable for implementation. Most Member States have stated their intentions of maintaining constructive and active attitudes in future proceedings.

The Presidency intends to continue discussions in the Council's preparatory bodies in order to advance the proceedings on the draft Directive, taking full account of the principle of subsidiarity, while introducing real, verifiable obligations on the Member States in the field of soil protection.

