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No. prev. doc. : 10387/09 ENV 392 AGRI 239 DEVGEN 158 FORETS 58 FSTR 54 RECH 181  
REGIO 24 TRANS 220 CODEC 782

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REGIO 53 TRANS 246 CODEC 1012 - COM(2006) 232 final

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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**  
– Progress report

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**I. INTRODUCTION**

1. The Commission submitted its proposals for a Thematic Strategy for Soil Protection and a proposal for a Directive establishing a framework for the protection of soil to the Council on 25 September 2006. The proposal for a Directive is based on Article 175(1) of the Treaty.

The Strategy sets out a series of actions aimed at defining a comprehensive strategy with the overall objective of the protection and sustainable use of soil by preventing further soil degradation, preserving its functions and restoring degraded soils. The Strategy is intended to be partly implemented through a proposed Framework Directive which, as it now stands, would contain the following elements:

- integration of soil protection aspects into relevant sectoral policies;
- precautionary and preventive measures;
- measures to contain or mitigate the effects of sealing;
- identification of priority areas requiring special protection from erosion, organic matter decline, compaction, salinisation, landslides and acidification;
- action programmes to combat such soil degradation processes;
- identification of contaminated sites;
- remediation of contaminated sites;
- awareness raising, reporting and exchange of information.

2. The European Parliament adopted its first-reading opinion on 14 November 2007 (14979/07).

The Committee of the Regions and the Economic and Social Committee delivered their Opinions on 13 February and on 25 April 2007 respectively.

3. Extensive discussions on the above-mentioned proposal took place in 2007 under the Portuguese Presidency as well as in 2008 during the French Presidency. In the course of these discussions, broad agreement was reached on many elements of the proposed Directive. However, on a number of key issues, important differences in positions remained.

Early in 2009, the Presidency presented delegations with a set of options with a view to finding sufficient common ground on those outstanding issues (5505/09). This document compared the proposed solutions worked out at the end of the Portuguese and French Presidencies respectively, in order to allow delegations to formulate their preferences.

Subsequently, the Working Party on the Environment debated the proposed text intensively at its meetings on 26 January, 27 February, 23 March and 30 April 2009. During these discussions, the text evolved significantly in order to meet concerns expressed by a number of delegations.

4. The latest overall Presidency compromise text as it was put to the Permanent Representatives Committee can be found in 10387/09.

The discussion in the Permanent Representatives Committee on 10 June 2009 showed that there was no prospect of attaining a qualified majority, which would have enabled the Council to reach a political agreement at the meeting of the Council (Environment) on 25 June 2009.

## **II. STATE OF PLAY**

In general terms, a majority of delegations consider that a Framework Directive on soil protection is needed as it would fill a gap in EU environmental legislation and would provide a more holistic approach to soil protection.

Several delegations, however, remain critical of the proposed Directive and question notably its added-value in relation to existing *acquis* or its proportionality and its compliance with the subsidiarity principle. They are also concerned about cost-effectiveness.

The following contains an outline of the major outstanding issues addressed in the latest Presidency text by means of a number of compromise proposals.

1. Chapter I: Scope and definitions; current/ approved future use of degraded soils:

A number of delegations are of the opinion that, in some cases, re-establishing the appropriate level of functionality of a soil can be achieved through changing the land use. Other delegations, and the Commission, are concerned that such a provision could be misused by the owner of a contaminated site to circumvent remediation.

2. Integration (Article 3):

A majority of delegations are of the opinion that integrating soil protection aspects into policies which may significantly exacerbate soil degradation processes as set out in this Article would be essential for a successful soil protection strategy. However, a number of delegations remain concerned about the scope of Article 3 and the potential difficulty of transposing and implementing it. They are also apprehensive about possible overlap with other pieces of Community legislation, notably the Directive on the assessment of the effects of certain plans and programmes on the environment.

3. Chapter II: Identification of priority areas:

This chapter relates to soil degradation processes, whereby the proposed "priority area" approach continues to present difficulties for some Member States. They would prefer to manage possible soil degradation processes without having to define specific areas, and wish to ensure that the assessment would not be required to go down to the individual plot level. They are furthermore doubtful that establishing relevant levels of risk acceptability, including in numerical terms, would be practicable. Finally, there is a concern that some degradation processes may occur across the whole of a Member State's territory in a patchy way, making it impracticable to define specific areas.

4. Chapter III: Article 10 (Identification and inventory of contaminated sites):

This Article, dealing with soil contamination, covers some of the most intensively debated provisions of the Directive.

Several delegations have expressed concerns regarding the identification procedure for contaminated sites, finding it too cumbersome and costly, as well as the timeline for the finalisation of the inventory of contaminated sites. The Article now contains a much streamlined identification procedure, leaving significant flexibility to Member States. A number of other delegations and the Commission, however, oppose the degree of flexibility as provided for in the text and prefer greater harmonisation in order to achieve a level playing field across the EU.

5. Soil status report (Article 12):

The soil status report was conceived by the Commission as a tool to make information on the status of soil available between parties in land transactions, and as one of the tools to feed the inventory of contaminated sites. It would be required in the case of sale or land-use change of certain sites where there is or there has been a potentially soil polluting activity. Some delegations remain concerned about cost implications for economic actors, with potential negative impacts on economic development and in particular the housing market.

In the current Presidency text, requirements concerning the establishment, content and use of soil status reports have been relaxed and leave more flexibility to Member States in order to respond to these concerns.

6. Chapter V: Implementation and adaptation to technical progress (Article 18):

This Article on comitology poses problems for some delegations which would prefer a platform for the exchange of information and best practices as provided for in Article 17, without further provisions that could in their view lead to harmonised risk assessment methodologies in some degree.