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NOTE

from : General Secretariat
to : Council

No. prev. doc. : 6124/1/10 ENV 64 AGRI 35 DEVGEN 42 FORETS 19 FSTR 5 RECH 40
REGIO 5 TRANS 27 CODEC 89 REV 1

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**
- Progress report

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 192(1) of the Treaty on the Functioning of the European Union.

2. The European Parliament adopted its first-reading opinion on 14 November 2007. *
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, in 2008 during the French Presidency, and in 2009 under the Czech Presidency of the Council.
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.

4. Early in 2010, the Presidency presented delegations with a text which was debated by the Working Party on the Environment. The latest Presidency text, with footnotes illustrating the position of delegations, can be found in the Annex to 6124/1/10 REV 1. An outline of main outstanding issues is set out in Part II below. In relation to these, and the proposed Directive in general, no significant change in the positions of delegations and the Commission has been registered so far (see notably footnote 1 in 6124/1/10 REV 1), as established by the Permanent Representatives Committee at its meeting on 5 March 2010.

It was therefore confirmed that there is at this stage no prospect for attaining a qualified majority in favour of the proposal in Council.

In general terms, a majority of delegations support a Framework Directive on soil protection. They hold the view that it is needed in order to fill a gap in Union environmental legislation and to provide a more holistic approach to soil protection. This view is also upheld by the Commission.

* OJ C 282 E, 6.11.2008, p.281.

** OJ C 146, 30.6.2007, p. 34.

*** OJ C 168, 20.7.2007, p. 29.

Several delegations, however, remain highly critical of the proposed Directive. These delegations oppose the proposal on grounds of the subsidiarity and proportionality principles, expected costs and administrative burden. Furthermore, they question its added-value in relation to existing Union law.

5. The Council (Environment) is invited to take note of this progress report at its meeting on 15 March 2010.

II. MAIN OUTSTANDING ISSUES

1. Chapter II: Identification of Priority Areas (Article 6)

There are a number of elements of flexibility in the text with a view to allowing Member States to most appropriately apply the priority area approach to soil degradation processes on their territory. Those soil degradation processes of relevance and significance are to be determined at the administrative level and geographical scale that Member States consider appropriate. Member States also have the possibility to demonstrate that a soil degradation process is not occurring or will not be likely to occur on their territory.

Some delegations continue however to have major concerns with the priority area approach as such, and ask for an opt-out choice through an additional provision that would allow Member States the possibility not to apply this approach, on the assumption that one or more soil degradation processes occurring on their territory would not appropriately be addressed through the priority area approach.

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

This Article contains the identification procedure for contaminated sites which leaves flexibility to Member States, notably:

- through an indicative Annex II on potentially soil-contaminating activities (paragraph 2(a));
- to follow a prioritisation for the identification procedure to be established by the Member State (paragraph 2 second subparagraph);
- an indicative intermediate timetable (paragraph 5);
- a review clause in relation to the deadline for finalisation of the inventory of contaminated sites (paragraph 5a).

However, some delegations continue to have strong concerns in relation to the provisions on the risk assessment methodology for identifying contaminated sites, which they request should be left to Member States to be determined. In addition, some delegations cannot support the 25 year deadline for establishing the inventories of contaminated sites.

3. Soil status report (Article 12)

Some delegations ask for a much greater degree of flexibility for Member States concerning the establishment, content and use of soil status reports because of concerns about potential costs. In addition, those delegations request to exclude small sites and private citizens from the requirements of producing soil status reports in the case of land transactions.

4. Chapter V: Delegated/implementing acts (Articles 18 to 18c)

These Articles (former "comitology" Article) remain under scrutiny by delegations. Some delegations do not wish to have delegated acts applied to the (indicative) Annexes I and II, nor for possible technical elements of the soil contamination risk assessment, for which they request greater flexibility under Article 10.
