



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 16 July 2007**

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**NOTE**

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from: General Secretariat  
to: Delegations

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No. Cion prop.: 13388/06 - 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** and amending Directive  
2004/35/EC

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The Annex to this note contains an annotated version of the above-mentioned proposal, reflecting the key points raised in discussions to date within the Working Party on the Environment. It also incorporates certain drafting suggestions from the Presidency.

Underlining indicates changes of substance compared to the Commission's proposal, while "[...]" indicates a deletion.

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<sup>1</sup>**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>\*</sup>,

Having regard to the opinion of the Committee of the Regions<sup>\*\*</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>\*\*\*</sup>,

Whereas:

[*Recitals omitted.*]

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<sup>1</sup> FR/UK have a parliamentary scrutiny reservation.

All delegations have a general scrutiny reservation.

\* OJ C ...

\*\* OJ C ...

\*\*\* Opinion of the European Parliament of ... (OJ C ...), Council common position of ... (OJ C ...) and position of the European Parliament of ... (not yet published in the Official Journal). Legislative resolution of the European Parliament of ... (not yet published in the Official Journal) and Council decision of ...

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **General provisions**

#### *Article 1*

#### *Subject-matter and scope*<sup>2</sup>

This Directive establishes a framework for the protection of soil and the preservation of the capacity of soil to perform any of the following environmental, economic, social, scientific and cultural functions, while promoting the sustainable use of soil:<sup>3</sup>

- (a) biomass production, including in agriculture and forestry;
- (b) storing, filtering and transforming nutrients, substances and water;<sup>4</sup>
- (c) biodiversity pool, such as habitats, species and genes;<sup>5</sup>
- (d) physical and cultural environment for humans and human activities;
- (e) source of raw materials;

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<sup>2</sup> One delegation suggests restricting Article 1 to subject-matter and adding a new Article 1a on scope. This new Article 1a would exclude areas subject to approved uses in accordance with existing Community legislation from the scope of Articles 4 to 14. It would also include exemptions for all forms of fertiliser and soil-improvement agents, forests, national defence and the fulfilment of international obligations.

<sup>3</sup> Some delegations request clarification of the text, arguing that the seven functions listed are not all compatible and that prioritisation is therefore necessary.

Some other delegations suggest the addition of a reference to restoration.

<sup>4</sup> Some delegations have doubts about whether the Directive should cover these aspects. Some other delegations suggest adding an explicit reference to soil's function of preserving groundwater resources by filtering water and replenishing aquifers.

<sup>5</sup> One delegation suggests referring instead to the function of providing a basis for animal and plant life and soil organisms.

- (f) acting as carbon pool;<sup>6</sup>
- (g) archive of geological and archaeological heritage.

To that end, it lays down measures for the prevention of soil degradation processes, both occurring naturally<sup>7</sup> and caused by a wide range of human activities, which undermine the capacity of a soil to perform those functions. Such measures include the mitigation of the effects of those processes, and the restoration and remediation of degraded soils to a level of functionality consistent at least with its current and approved future use.<sup>8</sup>

[...]

## *Article 2*

### *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) "soil" means the top layer of the Earth's crust situated between the bedrock and the surface (excluding groundwater as defined in Article 2(2) of Directive 2000/60/EC of the European Parliament and of the Council\*, the seabed and the beds of lakes and rivers);<sup>9</sup>
- (2) "sealing" means the permanent covering of the soil surface with an impermeable material;<sup>10</sup>

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<sup>6</sup> One delegation considers this point superfluous, in view of point (b).

<sup>7</sup> Some delegations consider that the Directive should focus principally or exclusively on degradation resulting from human activities.

<sup>8</sup> Some delegations request the wording "current *or* approved future use".

\* OJ L 327, 22.12.2000, p. 1.

<sup>9</sup> One delegation has suggested an alternative, more detailed definition of "soil" and adding a reference to Community legislation on groundwater (Directive 2006/116/EC).

<sup>10</sup> Some delegations consider this definition unclear.

The representative of the Commission pointed out that Article 5 clarified to what extent Member States would need to take measures in relation to sealing.

One delegation has suggested an alternative, more detailed definition of "sealing".

- (3) "dangerous substances" means substances or preparations within the meaning of Council Directive 67/548/EC\* and Directive 1999/45/EC of the European Parliament and of the Council\*\*; <sup>11</sup>
- (4) "contaminated sites" means sites where there is a confirmed presence, caused by human activities, of dangerous substances at such a level that Member States consider that they pose a significant risk to human health or the environment, taking account of the current and approved future use of the land; <sup>12</sup>
- (5) "inventory" means the inventory of contaminated sites in a Member State;
- (6) "priority areas" means areas where there is decisive evidence, or legitimate grounds for suspicion, that one or more soil degradation processes is occurring or is likely to occur in the near future; <sup>13</sup>
- (7) "soil degradation processes" means:
- (i) erosion by water or wind; <sup>14</sup>
  - (ii) organic matter decline brought about by a steady downward trend in the organic fraction of the soil (excluding undecayed plant and animal residues, their partial decomposition products and the soil biomass); <sup>15</sup>

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\* OJ L 196, 16.8.1967, p. 1.

\*\* OJ L 200, 30.7.1999, p. 1.

<sup>11</sup> One delegation wishes to limit the definition to substances that hamper soil functions.

<sup>12</sup> Some delegations request a reference to the current or approved future use.

<sup>13</sup> Some delegations argue that the focus should be on areas where there is a significant risk of soil degradation.

<sup>14</sup> One delegation wishes to widen this to cover all forms of erosion.

<sup>15</sup> Some delegations argue that it is not possible to differentiate partial decomposition products and soil biomass from the remainder of the organic fraction.

(iii) compaction through an increase in bulk density and a decrease in soil porosity;

(iv) salinisation through the accumulation in soil of soluble salts;

(v) landslides brought about by the down-slope, moderately rapid to rapid movement of masses of soil and rock material.<sup>16</sup>

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### *Article 3*

#### *Integration*

In the development of sectoral policies likely to exacerbate or reduce soil degradation processes, Member States shall identify, describe and assess the impacts of such policies on these processes, in particular in the areas of regional and urban spatial planning, transport, energy, agriculture, rural development, forestry, raw material extraction, trade and industry, product policy, tourism, climate change, environment, nature and landscape.

Member States shall make public those findings.<sup>18</sup>

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<sup>16</sup> Several delegations request the addition of acidification resulting from human activities to the list of soil degradation processes.

Several delegations request the addition of a reference to biodiversity.

The representative of the Commission said that more research on soil biodiversity would be necessary beforehand.

<sup>17</sup> Some delegations have suggested adding further definitions, including on "soil contamination", "significant risk to human health or the environment" and "degradation".

<sup>18</sup> While supporting the aim of integrating soil protection considerations into other policy areas, many delegations oppose, or have doubts about the need for, new requirements over and above those of existing Community legislation, particularly Directive 2001/42/EC. They request a softer wording, such as a general obligation to ensure integration, or the deletion either of the whole Article or of the second subparagraph.

*Article 4*  
*Precautionary measures*

Member States shall ensure that any land user whose actions affect the soil in a way that can reasonably be expected to hamper significantly any of the soil functions referred to in Article 1 is obliged to take precautions to prevent or minimise such adverse effects.<sup>19</sup>

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*Article 5*  
*Sealing*

For the purposes of preserving the soil functions referred to in Article 1, Member States shall take appropriate measures to limit sealing or, where sealing is to be carried out, to mitigate its effects in particular by the use of construction techniques and products which will allow as many of those functions as possible to be maintained.<sup>21</sup>

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<sup>19</sup> Several delegations request the rewording of this provision to clarify that the requirement is to take measures proportionate to the assessed risk.  
Some delegations suggest focussing on activities rather than land users and widening the provision to cover diffuse pollution.  
One delegation suggests adding clarifying the relationship between this Directive and Directives 85/337/EEC, 97/11/EC and 2001/42/EC.

<sup>20</sup> One delegation suggests the addition of an Article on good agricultural practice.

<sup>21</sup> Some delegations support the current wording of Article 5 or support the underlying principle while requesting the addition of more detail.  
One delegation would like a more prescriptive provision, in particular to require the use of brown field sites for construction.  
However, several other delegations want a more flexible provision, arguing that sealing is not a problem in all cases and all areas.

## Chapter II

### Risk prevention, mitigation and restoration

#### SECTION ONE

#### IDENTIFICATION OF PRIORITY AREAS

##### *Article 6*

*Identification of priority areas at risk from erosion, organic matter decline, compaction, salinisation or landslides*

1. By ...<sup>\*</sup>, Member States shall identify priority areas on their national territory, at the appropriate scale. [...] <sup>22</sup>

For the purposes of that identification, Member States shall, in respect of each of the soil degradation processes<sup>23</sup>, use at least the elements listed in Annex I<sup>24</sup> and shall take into account the effects of those processes in exacerbating greenhouse gas emissions<sup>25</sup> and, where relevant, desertification.<sup>26</sup>

2. The priority areas identified pursuant to paragraph 1 shall be made public and updated at least every ten years.

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<sup>\*</sup> 7 years after entry into force.

<sup>22</sup> While agreeing that Member States should assess risks and take appropriate measures as provided for in Article 8, some delegations have serious doubts about the identification of specific geographical areas as being "at risk".

<sup>23</sup> One delegation suggests that, when identifying areas at risk from landslides, Member States should take account other risks, including loss of human life and well-being and damage to cultural heritage, properties and infrastructure.

<sup>24</sup> Many delegations request greater flexibility for Member States, either by making Annex I an indicative list or by deleting it.

<sup>25</sup> Some delegations have expressed doubts about the implications and appropriateness of the reference to greenhouse gas emissions.

<sup>26</sup> One delegation suggests making clear that Member States should make use of existing data, where available.



*Article 7*  
*Methodology*

Member States may base the identification of priority areas on empirical evidence or on modelling. If modelling is used, the models must be validated by comparing the results on the basis of empirical data which have not been used for the development of the model itself.<sup>27</sup>

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<sup>27</sup> One delegation would prefer a greater degree of harmonisation.  
Some other delegations argue that Member States should have greater flexibility to determine how to validate their models.

**SECTION TWO**  
**ESTABLISHMENT OF TARGETS AND PROGRAMMES OF MEASURES**

*Article 8*

*Programmes of measures to combat erosion, organic matter decline, compaction, salinisation and landslides*<sup>28</sup>

1. For the purposes of preserving the soil functions referred to in Article 1, Member States shall in respect of the priority areas identified in accordance with Article 6, draw up, at the scale that they consider appropriate, a programme of measures including at least risk reduction targets, appropriate measures to reach those targets, a timetable for the implementation of those measures and an estimate of the allocation of private or public resources for their implementation. Such programmes of measures may build upon existing national measures and programmes already set up under national or Community legislation or international agreements.<sup>29</sup>
2. When drawing up and revising the programmes of measures pursuant to paragraph 1, Member States shall give due consideration to the social and economic impacts of the measures envisaged.

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<sup>28</sup> One delegation requests a much shorter Article requiring Member States to take appropriate and proportionate measures, with no programming obligations.

<sup>29</sup> Several delegations stress that Member States should be able to determine what measures are appropriate, including the option of taking no measures if the risk is not significant or the costs excessive.

Some delegations request clarification that programmes of measures must not conflict with measures taken within the framework of the CAP.

Some delegations suggest referring to the sustainable use of soil rather than soil functions.

Another delegation considers that programmes of measures should also include precautionary protection measures and, where possible, restoration targets.

Member States shall ensure that measures are cost-effective, technically feasible and shall carry out impact assessments, including cost-benefit analyses, prior to the introduction of the programmes of measures.<sup>30</sup>

Member States shall indicate in their programmes of measures how the measures are to be implemented and how they will contribute to achievement of the environmental targets established.

3. Where an area is at risk from different concurrent soil degradation processes, Member States may adopt a single programme in which appropriate risk reduction targets are to be set for all the risks identified together with the appropriate measures for reaching those targets.
4. The programme of measures shall be drawn up by ...<sup>\*</sup> and shall be in application no later than by ...<sup>\*\*</sup>.<sup>31</sup>

The programme of measures shall be made public and shall be reviewed at least every five years.<sup>32</sup>

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<sup>30</sup> Some delegations oppose, or have doubts about, the requirement for impact assessments and cost-benefit analyses over and above the requirements of Directive 2001/42/EC.

<sup>\*</sup> 9 years after entry into force.

<sup>\*\*</sup> 10 years after entry into force.

<sup>31</sup> One delegation considers this timetable too ambitious, while another delegation wishes it to be accelerated.

<sup>32</sup> Some delegations consider a 10 year review cycle more appropriate.  
Some other delegations request an obligation to update rather than to review programmes of measures.

## Chapter III

### Soil contamination

#### SECTION ONE

#### PREVENTION AND INVENTORY

#### *Article 9*

#### *Prevention of soil contamination*

For the purposes of preserving the soil functions referred to in Article 1, Member States shall take appropriate and proportionate measures to limit the intentional or unintentional introduction of dangerous substances on or in the soil, excluding those due to air deposition and those due to a natural phenomenon of exceptional, inevitable and irresistible character, in order to avoid accumulation that would hamper soil functions or give rise to significant risks to human health or the environment.<sup>33</sup>

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<sup>33</sup> Several delegations have doubts and/or concerns about this Article, in particular regarding the relationship with Article 4, some going so far as to propose its deletion. However, one other delegation wishes to add more detailed requirements to the Article, particularly as regard diffuse pollution.

## Article 10

### *Inventory of contaminated sites*

1. Member States shall identify contaminated sites on their national territory in accordance with the procedure laid down in Article 11. [...] <sup>34</sup>
2. Member States shall establish an [...] inventory of contaminated sites [...].  
The inventory shall be made public, regularly updated, and reviewed at least every five years. <sup>35</sup>

## Article 11

### *Identification procedure*

1. Member States shall designate competent authorities responsible for the identification of contaminated sites.
2. By ... \* , the competent authorities shall have identified the location of at least the sites where the potentially soil-polluting activities referred to in Annex II are taking place or have taken place in the past. <sup>36</sup>

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<sup>34</sup> Some delegations do not wish to use the term "inventory" but simply to require Member States to identify contaminated sites.

One delegation wishes to limit this obligation to historic contamination, while another delegation requests a clear distinction between past and future contamination.

<sup>35</sup> Several delegations accept the principle of inventories, but argue that Member States should be able to decide how and when to establish them.

Some delegations do not see the need for a five-yearly review since inventories would be updated regularly.

One delegation wishes it to be clear that Member States may use existing inventories or systems for identifying contaminated sites.

\* 7 years after entry into force.

<sup>36</sup> One delegation suggests an explicit requirement for Member States to draw up a list of potentially contaminated sites and to ensure the monitoring of these sites.

For those purposes, the activities referred to in point 2 of Annex II shall be considered independently of the thresholds specified in Annex I to Council Directive 96/61/EC<sup>\*</sup>, except for the activities carried out by micro-enterprises, as defined in point 3 of Article 2 in the Annex to Commission Recommendation 2003/361/EC<sup>\*\*</sup>, and those relative to the rearing of livestock.<sup>37</sup>

The identification shall be reviewed at regular intervals.

3. In accordance with the following timetable, competent authorities shall ensure that the concentration levels of dangerous substances in the sites identified in accordance with paragraph 2 are measured<sup>38</sup> and, where the levels are such that there may be sufficient reasons to believe that they pose a significant risk to human health or the environment, a site specific risk assessment shall be carried out in relation to those sites:
- (a) by ... <sup>\*\*</sup>, for at least 10% of the sites;
  - (b) by ... <sup>\*\*\*</sup>, for at least 60% of the sites;
  - (c) by ... <sup>\*\*\*\*</sup>, for the remaining sites.<sup>39</sup>

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\* OJ L 257, 10.10.1996, p. 26.

\*\* OJ L 124, 20.5.2003, p. 36.

<sup>37</sup> Many delegations that Annex II is much too broad in its scope and should therefore be shortened and clarified, made an indicative list or deleted, allowing Member States to follow a risk-based approach to the identification of potentially contaminated sites. They also favour a shorter and more flexible Article.

One delegation favours the total deletion of Article 11 and Annex II.

One other delegation favours the establishment through comitology of a harmonised methodology for the identification of contaminated sites.

<sup>38</sup> Some delegations argue that the measurement of concentrations of dangerous substances should not be the only available methodology.

\*\* 7 years after entry into force.

\*\*\* 17 years after entry into force.

\*\*\*\* 27 years after entry into force.

<sup>39</sup> Several delegations consider the proposed timetable unrealistic, particularly the first deadline, and argue that the choice of sites should be risk-based.

One delegation suggests a single strategy and timetable for the identification and remediation of contaminated sites.

*Article 12*  
*Soil status report*<sup>40</sup>

1. Where a site is to be sold on which a potentially polluting activity listed in Annex II is taking place, or for which the official records, such as [...] registers, show that it has taken place, Member States shall ensure that the owner of that site or the prospective buyer makes a soil status report available to a competent authority as referred to in Article 11(1) and to the other party in the transaction.<sup>41</sup>
2. The soil status report shall be issued by a body or person so authorised in accordance with national law. It shall include at least the following details:
  - (a) the background history of the site, as available from official records;
  - (b) a chemical analysis determining the concentration levels of the dangerous substances in the soil, limited to those substances that are linked to the potentially polluting activity on the site;<sup>42</sup>
  - (c) the concentration levels at which there are sufficient reasons to believe that the dangerous substances concerned pose a significant risk to human health or to the environment taking account of the current and approved future use.<sup>43</sup>
3. Member States shall establish the methodology necessary for determining the concentration levels referred to in paragraph 2(b).
4. Competent authorities shall use the information contained in the soil status report for the purposes of identifying contaminated sites in accordance with Article 10(1).

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<sup>40</sup> One delegation requests the deletion of Article 12.

<sup>41</sup> Some delegations argue that the report should remain valid for a certain period of time. Some delegations wish to widen the scope of the Article to cover rental or changes in land use.

<sup>42</sup> Several delegations request a simplified Article, in particular without the requirement for systematic chemical analysis.

However, one delegation favours more detailed requirements.

<sup>43</sup> One delegation requests a reference to "current or approved future use".

**SECTION TWO**  
**REMEDIATION**

*Article 13*  
*Remediation*

1. Member States shall ensure that the contaminated sites listed in their inventories are remediated in accordance with the strategy drawn up pursuant to Article 14.
2. Remediation shall consist of actions on the soil aimed at the removal, control, containment or reduction of contaminants so that the contaminated site, taking account of its current use and approved future use, no longer poses any significant risk to human health or the environment. It may consist of natural recovery.<sup>44</sup>
3. Member States shall set up appropriate mechanisms to fund the remediation of the contaminated sites for which, subject to the polluter pays principle, the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of remediation.<sup>45</sup>

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<sup>44</sup> Some delegations request a provision making clear that Member States would have no obligation to take measures if the costs would outweigh the benefits.

One delegation suggests the addition of a requirement to take temporary and urgent measures to deal with serious threats to human health or to the environment.

<sup>45</sup> Several delegations have concerns about the possible cost implications for the public purse or of the need to avoid conflict with existing national systems.



Article 14

[...] Remediation strategy<sup>46</sup>

1. Member States shall, on the basis of the inventory and by ...<sup>\*</sup>, draw up a [...] remediation strategy covering the whole of their national territory, including at least remediation targets, a prioritisation, starting with those sites which pose a significant risk to human health<sup>47</sup>, a timetable for implementation, and the funds allocated [...].<sup>48</sup>

Where containment or natural recovery are applied, the evolution of the risk to human health or the environment shall be monitored.

2. The remediation strategy shall be in application and made public by ...<sup>\*\*</sup>. It shall be reviewed at least every five years.<sup>49</sup>

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<sup>46</sup> Some delegations call for the deletion of Article 14, seeing no added value in remediation strategies.

<sup>\*</sup> 9 years after entry into force.

<sup>47</sup> Several delegations consider that the reference to human health would unduly restrict Member States' ability to set priorities.

<sup>48</sup> Some delegations suggest referring to indicative costs rather than to funds allocated.

<sup>\*\*</sup> 10 years after entry into force.

<sup>49</sup> Some delegations consider that more time would be necessary.

## Chapter IV

### Awareness raising, reporting and exchange of information

#### *Article 15*

##### *Awareness raising and public participation*

1. Member States shall take appropriate measures to raise awareness about the importance of soil for human and ecosystem survival, and promote the transfer of knowledge and experience for a sustainable use of soil.
2. Article 2(1), (2), (3) and (5) of Directive 2003/35/EC shall apply to the preparation, modification and review of the programmes of measures [...] referred to in Article 8 and the [...] remediation strategies referred to in Article 14.<sup>50</sup>

#### *Article 16*

##### *Reporting*

1. Member States shall make the following information available to the Commission by ...<sup>\*</sup>, and every five years thereafter:<sup>51</sup>
  - (a) a summary of the initiatives taken pursuant to Article 5;
  - (b) the priority areas identified pursuant to Article 6(1);
  - (c) the methodology used for risk identification pursuant to Article 7;

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<sup>50</sup> One delegation considers that it would be more appropriate to amend Annex I to Directive 2003/35/EC to add an appropriate reference to this Directive.

<sup>\*</sup> Another delegation requests the deletion of this paragraph.  
10 years after entry into force.

<sup>51</sup> Some delegations have a general concern about the administrative burden that this Article would entail.

Some other delegations consider the proposed frequency of reporting excessive.

- (d) the programmes of measures drawn up pursuant to Article 8(1) and the assessments carried out pursuant to Article 8(2);
  - (e) the outcome of the identification pursuant to Article 11(2) and (3) and the inventory of contaminated sites established pursuant to Article 10(2);<sup>52</sup>
  - (f) the [...] remediation strategy adopted pursuant to Article 14;
  - (g) a summary of the initiatives taken pursuant to Article 15 as regards awareness raising.
2. The information referred to in paragraph 1(b) shall be accompanied by metadata and shall be made available as documented digital georeferenced data in a format that can be read by a geographic information system (GIS) in accordance with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).<sup>\*</sup>

#### *Article 17*

#### *Exchange of information*

By ...<sup>\*\*</sup>, the Commission shall set up a platform for the exchange of information between Member States and stakeholders on the implementation of this Directive, particularly the risk area identification pursuant to Article 6 and on risk assessment methodologies for contaminated sites currently in use or under development.

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<sup>52</sup> Some delegations consider the requirement to provide the full inventory to the Commission excessive, arguing that a summary would be sufficient.

<sup>\*</sup> JO L 108, 25.4.2007, p. 1.

<sup>\*\*</sup> 1 year after entry into force.

## Chapter V

### Final provisions

#### *Article 18*

#### *Implementation and adaptation to technical progress*<sup>53</sup>

1. Annex I may be adapted to technical and scientific progress. That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).
2. Where, on the basis of the exchange of information referred to in Article 17, a need to harmonise the risk assessment methodologies for soil contamination is identified, [...] common criteria for soil contamination risk assessment, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).<sup>54</sup>
3. By ...<sup>\*</sup>, [...] the necessary provisions on data and metadata quality, utilisation of historical data, methods, access, and data-exchange formats for the implementation of the provisions of Article 16 shall be adopted in accordance with the procedure referred to in Article 19(2).

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<sup>53</sup> Some delegations oppose the use of comitology for the implementation of this Directive, arguing that the exchange of information and best practice through the platform provided for in Article 17 would be sufficient or that such political decisions should be taken through co-decision.

<sup>54</sup> One delegation cannot accept the full harmonisation of risk assessment methodologies through comitology, while another delegation could only accept the harmonisation of certain elements of the methodologies through comitology.

<sup>\*</sup> 4 years after entry into force.

*Article 19*  
*Committee*

1. The Commission shall be assisted by a committee, hereinafter “the Committee”.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

[...]

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*Article 20*  
*Commission report*

1. The Commission shall publish a first evaluation report on the implementation of this Directive within two years of receiving the programmes of measures and [...] remediation strategies.

The Commission shall publish further reports every five years thereafter.

It shall submit the reports to the European Parliament and to the Council.

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<sup>55</sup> One delegation suggests the addition of a new Article excluding measures taken pursuant to this Directive from Community co-financing.

2. The reports provided for in paragraph 1 shall include a review of progress in the implementation of this Directive based on an assessment by the Commission based on information provided in accordance with Article 16.

#### *Article 21*

##### *Review*

The Commission shall review this Directive at the latest by ...\* and shall, where appropriate, propose any necessary amendments.

#### *Article 22*

##### *Penalties*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by the date specified in Article 24 at the latest and shall notify it without delay of any subsequent amendment affecting them.

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\* 15 years after entry into force.

*Article 23*  
*Amendment to Directive 2004/35/EC*

In Article 6 of Directive 2004/35/EC, paragraph 3 shall be replaced by the following:

- “3. The competent authority shall require the remedial measures to be taken by the operator. Subject to Article 13(1) of Directive xx/xx/xx, if the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d) of this Article, or cannot be identified or is not required to bear the costs under this Directive, those measures may be taken by the competent authority itself.”<sup>56</sup>

*Article 24*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...\* at the latest.\*\* [...]

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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<sup>56</sup> Several delegations are concerned that the proposed amendment to the environmental liability Directive is unnecessary and/or undesirable.

\* 24 months after entry into force of this Directive.

\*\* Recital: "In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public."

*Article 25*

*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 26*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



## ANNEX I

SECTION 1 COMMON ELEMENTS FOR THE IDENTIFICATION OF AREAS AT RISK OF EROSION
Soil typological unit (STU) (soil type)
Soil texture (STU level)
Soil density, hydraulic properties (STU level) <sup>57</sup>
Topography, including slope gradient and slope length
Land cover
Land use (including land management, farming systems and forestry)
Climate (including rainfall distribution and wind characteristics)
Hydrological conditions <sup>58</sup>
Agro-ecological zone

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<sup>57</sup> One delegation suggests the deletion of this entry, arguing that it is difficult to measure.

<sup>58</sup> One delegation suggests adding references to changes in land use and anthropogenic factors such as hydraulic works and referring both to hydrological and hydrogeological conditions.

SECTION 2 COMMON ELEMENTS FOR THE IDENTIFICATION OF AREAS AT RISK OF SOIL ORGANIC MATTER DECLINE
Soil typological unit (STU) (soil type)
Soil texture/clay content
Soil organic carbon (total and humus concentration)
Soil organic carbon (stock) <sup>59</sup>
Climate (including rainfall distribution and wind characteristics)
Topography <sup>60</sup>
Land cover
Land use (including land management, farming systems and forestry)
<sup>61</sup>

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<sup>59</sup> Some delegations have concerns about the references to organic carbon.

<sup>60</sup> One delegation suggests the deletion of this row, arguing that it is not always relevant.

<sup>61</sup> One delegation suggests adding references to land use and changes in land use.

SECTION 3 COMMON ELEMENTS FOR THE IDENTIFICATION OF AREAS AT RISK OF COMPACTION
Soil typological unit (STU) (soil type)
Topsoil and subsoil texture (STU level)
Topsoil and subsoil bulk density (STU level)
Soil organic matter (STU level)
Climate
Land cover
Land use (including land management, farming systems and forestry)
Topography <sup>62</sup>

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<sup>62</sup> One delegation suggests the deletion of this row, arguing that it is not always relevant.

SECTION 4 COMMON ELEMENTS FOR THE IDENTIFICATION OF AREAS AT RISK OF SALINISATION
Soil typological unit (STU) (soil type)
Soil texture (STU level)
Soil hydraulic properties
Irrigation areas, chemical properties of irrigated water and type of irrigation techniques
Groundwater information
Climate
<sup>63</sup>

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<sup>63</sup> One delegation suggests adding references to subsidence in pericoastal zones and to groundwater withdrawal in transition zones (brackish water).

SECTION 5 COMMON ELEMENTS FOR THE IDENTIFICATION OF AREAS AT RISK OF LANDSLIDES
Soil typological unit (STU) (soil type)
Occurrence/density of existing landslides
Bedrock
Topography
Land cover
Land use (including land management, farming systems and forestry)
Climate
Seismic risk
<sup>64</sup>

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<sup>64</sup> Some delegations suggest adding references to additional elements, including geotechnical and hydrological characteristics and water content.

## ANNEX II

### List of sites where potentially soil polluting activities take or have taken place<sup>65</sup>

1. Establishments where dangerous substances are or were present in quantities equal to or in excess of the amounts indicated in Parts 1 and 2, column 2 of Annex I to Council Directive 96/82/EC (Seveso)\*.
2. Sites where activities listed in Annex I to Council Directive 96/61/EC take or have taken place.
3. Airports.
4. Ports.
5. Former military sites.
6. Petrol and filling stations.
7. Dry cleaners.
8. Mining installations not covered by Council Directive 96/82/EC, including extractive waste facilities as defined in Directive 2006/21/EC of the European Parliament and of the Council\*\*.
9. Waste landfills as defined in Council Directive 1999/31/EC\*\*\*.
10. Waste water treatment installations.
11. Pipelines for the transport of dangerous substances.

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<sup>65</sup> Some delegations suggest deleting the reference to dry cleaners or limiting it to industrial dry cleaners and limiting the reference to waste water treatment installations to large installations. One delegation suggests widening the reference to landfills to cover illegal dumps and historic waste disposal sites.

\* OJ L 10, 14.1.1997, p. 13.

\*\* OJ L 102, 11.4.2006, p. 15.

\*\*\* OJ L 182, 16.7.1999, p. 1.