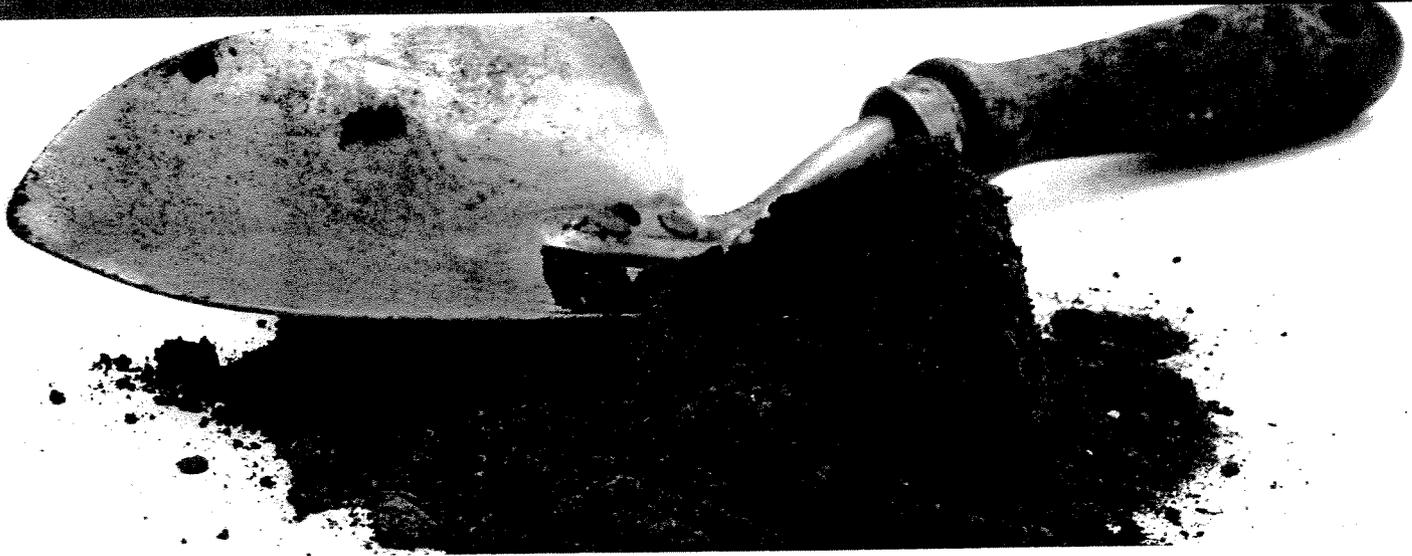


SOIL FRAMEWORK DIRECTIVE



The Proposed New Soil Framework Directive

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Soil degradation has been recognised as a serious problem in Europe for many years. As a result of its slow formation process, soil is regarded as essentially a non-renewable resource. It provides many beneficial services vital to the survival of human activities and eco-systems. Soil stores and transforms many substances, including water, nutrients and carbon. In fact, soil is the earth's biggest carbon store. Human activity, including inappropriate agricultural and forestry practices, industrial activities, tourism and urban sprawl, are all having a detrimental impact on soil. The 2002 Sixth Community Environment Action Programme recognised the time to act had come and called for the development of a soil-protection strategy. Prior to this, soil had not been subjected to a specific protection policy at EU community level, although some aspects of soil protection can be found in different community policies, for example, within water, waste, chemicals, industrial-pollution prevention, nature protection and pesticides.

A common framework has become justified in order to articulate the efforts of the member states to improve the protection of soils and its sustainable use, to control trans-boundary soil-degradation effects, to protect aquatic and terrestrial eco-systems and to preclude distortion of competition between economic operators. Recent work to address this policy gap has culminated in the Thematic Strategy on Soil Protection, ((Com 2006) 231 final) and the proposal for a new Directive on establishing a framework for the protection of soil ((Com 2006).232 final).

Briefly, the proposed Directive includes the following elements:

- The establishment of a common framework to protect soil on the basis of the principles of preservation of soil functions, prevention of soil degradation, mitigation of its effects, restoration of degraded soils and integration in other sectorial policies;
- The requirement to identify, describe and assess the impact of some sectorial policies on soil-degradation processes with a view to protect soil functions;
- The requirement for land users to take precautionary measures when their use of the soil can be expected to significantly hamper soil functions;
- An approach to soil sealing to ensure a more rational use of land and to maintain as many soil functions as possible. (In essence a policy drive prioritising brownfield development);
- Identification of areas at risk of erosion, organic matter decline, salinisation, compaction and landslides, and an establishment of national programmes and measures;
- With an estimated 3.5M contaminated sites in Europe, measures to limit the introduction of dangerous substances into soil, to avoid an accumulation in soil that would hamper soil functions and to create a risk to human health and the environment;
- Setting up an inventory of contaminated sites, a mechanism for funding the remediation of orphan sites, a soil-status report and establishing a national strategy for remediation of the contaminated sites identified.

Perhaps of greatest interest to readers are the last two elements, contained within Chapter III of the draft, covering soil contamination, under the headings, Prevention, Inventory and Remediation.

PREVENTION

Article 9 places Member States under an obligation to take appropriate measures to limit the intentional or unintentional introduction of dangerous substances on, or in the soil, in order to avoid accumulation that would hamper soil functions or give rise to significant risks to human health or the environment. This excludes introduction of substances due to air deposition and due to a natural phenomenon of exceptional, inevitable and irresistible character. It will be up to each Member State to decide what the 'appropriate measures' will be.

INVENTORY

Article 10 introduces a EU-wide definition of contaminated land. These will be, "sites with a confirmed presence caused by man, of dangerous substances of such a level that Member States consider they pose a significant risk to human health or the environment." (*Dangerous Substances are those substances within the meaning of Council Directive 67/548/EEC and Directive 1999/45/EC.*) It will therefore be for each Member State to make a judgement as to those sites that will be regarded as contaminated within their jurisdiction – a common approach is not, therefore, guaranteed. Member States will be obliged to identify and draw up a national inventory of such sites taking into account a risk evaluation based on the current and **cont.**

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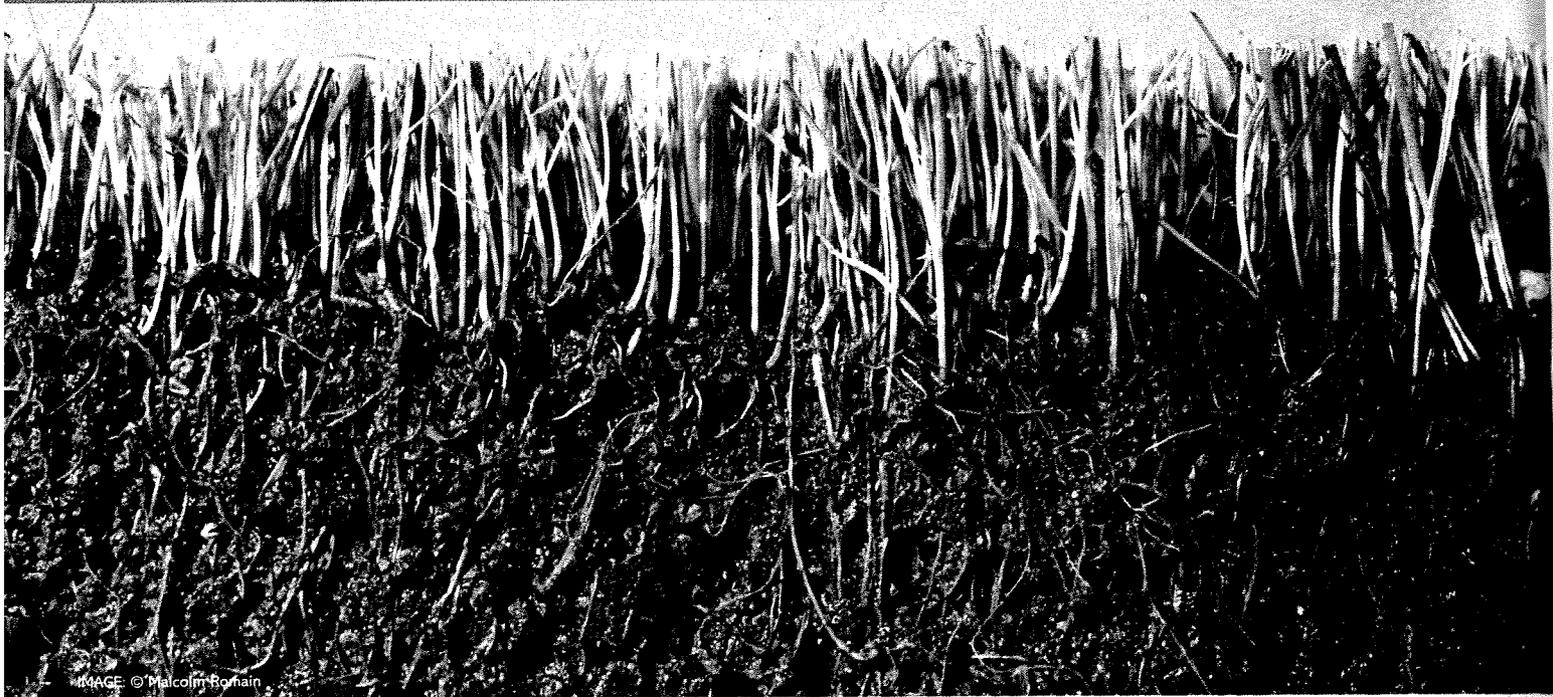


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approved future use of the land. The inventory will be made public and reviewed every five years.

The procedure for identification of contaminated sites is set out in Article 11. Within five years of the Directive coming into force, Member States are to have identified the location of at least those sites where potentially soil-polluting activities referred to Annex II are taking place, or have taken place. Annex II lists 11 groups of sites, being establishments where dangerous substances are, or were, present in quantities equal to, or in access of, the amounts indicated in Parts 1 and 2, column 2 of Annex I to Council Directive 96/82/EC (*the Seveso Directive*), activities listed in Annex 1 to Council Directive 96/61/EC (*ie. IPPC sites*), airports, ports, former military sites, petrol and filling stations, dry cleaners, mining installations, landfills, wastewater treatment installations and pipelines for the transport of dangerous substances.

The competent authorities are to measure the concentration of the dangerous substances in the sites where the levels are such that there will be sufficient reasons to believe they pose a significant risk to human health and the environment. An on-site risk assessment will have to be carried out in relation to those sites:

- Within five years for at least 10 per cent of the sites;
- Within 15 years for at least 60 per cent of the sites;
- Within 25 years for the rest of the sites.

SOIL STATUS REPORT

Article 12 provides that, where a site is sold on, which a potentially polluting activity is taking

place, or that official records show that it has taken place, the owner of the site or the prospective buyer will have to make a soil-status report available to the competent authority and to the other party. The soil-status report will have to be issued by an authorised body or a person appointed by the Member States that will include the following details:

- The background history of the site, as available from official records;
- A chemical analysis determining the concentration levels of the dangerous substances in the soil, limited to those substances that are linked to the potential polluting activity of the site;
- 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.

The Member States are to establish the methodology necessary for determining concentrations levels referred to in point two above and authorise the bodies that can provide the reports. As with the definition of contaminated sites, there does not appear to be any obligation for each Member State to adopt a common approach.

REMEDICATION

Having identified contaminated sites, the Member States are obliged to ensure that these are then remediated so that they no longer pose any significant risk to human health and the environment. In addition, appropriate

mechanisms are to be set up by each state to fund the remediation of the contaminated sites that, 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 cost of remediation.

Within seven years of implementation, the Member States must draw up a national remediation strategy including remediation targets a prioritisation, starting with those sites that pose a significant risk to human health, a timetable for implementation and allocation of funds to deal with remediation. The remediation strategy has to be made public within eight years and is to be reviewed every five years.

There is still a way to go until the Directive is adopted and then implemented and no doubt changes will occur. The contaminated-land provisions, in the context of the UK planning system and Part IIA of the Environmental Protection Act 1990, do not seem to raise any particular concerns, and are welcomed by those involved in the land-remediation technologies sector. Certain commercial organisations, including property-industry trade associations, will no doubt object to the principle of the disclosure of compulsory soil-status reports to the regulator as another erosion of caveat emptor. It will also accelerate remediation and may attract unwanted third-party attention in certain circumstances. However, in the context of creating an inventory and securing site remediation from the Member State's perspective, this will be a quick and cost effective way of ensuring they meet the overall objectives of the Directive.