



**COUNCIL OF  
THE EUROPEAN UNION**

Brussels, 5 June 2009

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**Interinstitutional File:  
2006/0086 (COD)**

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10387/09

**LIMITE**

ENV 392  
AGRI 239  
DEVGEN 158  
FORETS 58  
FSTR 54  
RECH 181  
REGIO 24  
TRANS 220  
CODEC 782

**DOCUMENT PARTIALLY  
ACCESSIBLE TO THE PUBLIC**

**NOTE**

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from : General Secretariat  
to : Committee of the Permanent Representatives (Part 1)

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No. prev. doc. : 7643/1/09 REV 1 ENV 207 AGRI 110 DEVGEN 68 FORETS 29 FSTR 38  
RECH 78 REGIO 12 TRANS 112 CODEC 364

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

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Subject : **PREPARATION OF THE COUNCIL (ENVIRONMENT) MEETING ON  
25 JUNE 2009**  
Proposal for a Directive of the European Parliament and of the Council  
establishing a framework for the **protection of soil**  
– Political agreement  
= Presidency proposal

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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.

2. The European Parliament adopted its first-reading opinion on 14 November 2007 (document 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.

4. Early in 2009, the Presidency presented delegations with a set of options with a view to finding sufficient common ground on those outstanding issues (document 5505/09).

Subsequently, the Working Party on the Environment debated the proposed text intensively, which evolved significantly in order to meet concerns of a number of delegations. The overall Presidency compromise text, with footnotes illustrating the position of delegations, can be found in the Annex to this Note. An outline of main outstanding issues to be considered can be found in Part II below.

In relation to these, no significant change in the positions of delegations and the Commission has been registered so far.

5. Denmark, Malta and the United Kingdom have Parliamentary reservations.

6. The Permanent Representatives Committee is invited to examine the outstanding issues with the aim of reaching convergence and clarification of delegations' positions.

II. **DELETED**

1.

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3. **DELETED**

4. **DELETED**

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Proposal for a  
**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**establishing a framework for the protection of soil**<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> **DELETED** opposes the proposal for a Framework Directive for reasons of subsidiarity, administrative burden, financial consequences as well as on grounds that immovable soil would hardly have transboundary effects. **DELETED** oppose the proposal for reasons of subsidiarity/proportionality, and **DELETED** requests maximum flexibility. **DELETED** has concerns in relation to subsidiarity, costs and consistency with existing EC legislation. **DELETED** have Parliamentary reservations.

\* 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*

1. This Directive establishes a framework for the protection of soil, its sustainable use and the preservation and, where technically feasible and costs are proportionate to the expected environmental and social benefits <sup>2</sup>, restoration of the capacity of soil to perform as many as possible of the following environmental, economic, social, scientific and cultural functions:
  - (a) food and other biomass production, including in agriculture and forestry;
  - (b) storing, filtering and transforming nutrients, substances and water, as well as replenishing bodies of groundwater;
  - (c) basis for life and biodiversity, such as habitats, species and genes;
  - (d) physical and cultural environment for humans and human activities;
  - (e) source of raw materials;
  - (f) acting as carbon reservoir;
  - (g) archive of geological, geomorphological and archaeological heritage.

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<sup>2</sup> **DELETED** would prefer to move the aspects of costs/benefits to a recital and Cion is of the view that mention in Article 13 is sufficient.

**DELETED**, supported by **DELETED**, suggests the following new recital (8a): "When assessing what may be technically feasible and whether costs would be proportionate to the expected environmental and social benefits of restoring the capacity of soil to perform as many as possible of its environmental, economic, social, scientific and cultural functions, due regard should be given to health and safety considerations."

To that end, it lays down measures for the prevention of soil degradation processes, caused by a wide range of human activities with due account also being taken of natural causes <sup>3</sup>, which significantly adversely affect the capacity of a soil to perform those functions while taking into account that some functions are mutually exclusive. <sup>4</sup> To address such soil degradation processes, it also lays down provisions for establishing measures for the restoration and remediation, including mitigation, of degraded soils to a level of functionality consistent at least with its current or <sup>5</sup> approved future use. <sup>6</sup>

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<sup>3</sup> The following recital will be added: "Soil degradation can have both natural origin and be caused by human activity. Some naturally occurring soil degradation processes cannot be avoided or mitigated and others can be acceptable to the extent that they do not exceed the level or risk acceptability established by Member States."

<sup>4</sup> The Presidency proposes amending recital (7) to read as follows: "Soil should be used in a sustainable manner which preserves its capacity to deliver ecological, economic and social services, while maintaining its functions so that future generations can meet their needs. While recognising that some soil functions may be mutually exclusive, as many as possible should be preserved."

<sup>5</sup> **DELETED** /Cion request to revert to "and".

<sup>6</sup> The Presidency suggests amending recital (26) as follows: "Taking into account the polluter pays principle, Member States should ensure that action is taken to remediate the contaminated sites identified within their national territory. When carrying out the identification and remediation of contaminated sites, Member States have to take into account the current and approved future use of the land. If there is no approved future use of the land at the time of the assessment of the risk of the site, only the current use should be taken into account. If the Member State intends to change the approved use of the land to a less sensitive use, in order to reduce the risk to human health or the environment, it should do so to ensure that the approved use of the land is always compatible with a level of risk that is not significant for human health and the environment."

**DELETED** prefers "it should do so taking into account future approved use" as last phrase of the recital.

2. This Directive shall apply to soil as defined in Article 2(1), excluding
- (i) groundwater <sup>7</sup> as defined in Article 2(2) of Directive 2000/60/EC of the European Parliament and of the Council <sup>\*</sup> and as covered by Directive 2006/118/EC of the European Parliament and of the Council <sup>\*\*</sup>,
  - (ii) the seabed, <sup>8</sup> and
  - (iii) soil that forms part of bodies of surface water under Article 2(10) of Directive 2000/60/EC.
3. Member States may decide, if so provided under national law, not to apply this Directive to soil where ongoing activities serving national defence purposes are taking place, if they deem that such application would have an adverse effect on those purposes. Member States shall, however, endeavour to ensure that such activities are conducted in a manner that is compatible, so far as reasonable and practicable, with the objectives of this Directive.

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<sup>7</sup> The following new recital (8a) will be added: "Specific provisions concerning the protection of groundwater are laid down in Directive 2006/118/EC and Directive 2000/60/EC. In order to avoid legal uncertainty, it is therefore opportune to exclude groundwater from the definition of soil, while ensuring that groundwater is considered as a possible receptor of soil contamination in the context of the identification and remediation of contaminated sites and related provisions in this Directive."

<sup>\*</sup> OJ L 327, 22.12.2000, p. 1.

<sup>\*\*</sup> OJ L 372, 27.12.2006, p. 19.

<sup>8</sup> The following new recital will be added: "With respect to the scope of this Directive and the exclusion of seabed, it is important to respect Member States' existing national provisions in relation to the interface of maritime and terrestrial jurisdiction."

<sup>9</sup> **DELETED** do not see a real need for such an exemption.



*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. The soil is composed of mineral particles, organic matter, water, air and living organisms <sup>10</sup>;
- (2) "sealing" means the permanent covering of the soil surface with an impermeable material;
- (3) "hazardous substances" means substances or mixtures within the meaning of Regulation (EC) No 1272/2008 of the European Parliament and of the Council <sup>\*</sup>;
- (4) "potentially soil-contaminating activities" means human activities which have the potential to damage soil significantly<sup>11</sup> due to the use, handling or storage of hazardous substances and which could result in contaminated sites;
- (5) "contaminated sites" means sites where there is a confirmed presence, caused by human activities, of hazardous substances to such a degree <sup>12</sup> that Member States consider that they pose a significant risk to human health or the environment, including groundwater. Such risk is to be assessed taking account of the current or<sup>13</sup> approved future use of the land, all known relevant contaminant pathways<sup>14</sup> and the extent of exposure;

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<sup>10</sup> The Presidency suggests amending recital (5) as follows: "Soil variability is very high in the Community and enormous differences exist in its structural, physical, chemical and biological state both within individual profiles and between soils, including factors such as the distance of the bedrock from the soil surface. These diverse conditions and needs in the Community should be taken into account as they require different specific solutions for the identification of priority areas [...], definition of targets and execution of appropriate and proportionate measures to ensure protection of soil."

<sup>\*</sup> OJ L 353, 31.12.2008, p. 1.

<sup>11</sup> ~~DELETED~~ "contaminate".

<sup>12</sup> ~~DELETED~~ /Cion: "level", ~~DELETED~~ "degree".

<sup>13</sup> ~~DELETED~~ /Cion: revert to "and".

<sup>14</sup> ~~DELETED~~ suggests "likely" instead of "all known", and ~~DELETED~~, a recital stating that it would be for Member States to define "significant risk", which may not depend only on the concentration levels of certain substances.

- (6) "remediation" means actions on the soil aimed at the removal, control, containment or reduction of contaminants, so that the contaminated site, taking account of its current or<sup>15</sup> approved future use, no longer poses any significant risk to human health or the environment;<sup>16</sup>
- (7) "register" means the list of sites where a potentially soil-contaminating activity is taking place or has taken place in the past;
- (8) "inventory" means the inventory of contaminated sites as defined in point 5;
- (9) "priority areas" means areas where there is decisive evidence, or legitimate grounds for suspicion, that one or more soil degradation processes exceeding the level of risk acceptability is occurring or is likely to occur in the near future;<sup>17</sup>
- (10) "soil degradation processes" means the following processes:
- (i) erosion by water or wind;
  - (ii) organic matter decline brought about by a steady downward trend in the organic fraction of the soil including peat, but excluding non decayed plant and animal residues;<sup>18</sup>
  - (iii) compaction through an increase in bulk density and a decrease in soil porosity;<sup>19</sup>
  - (iv) salinisation through the accumulation in soil of soluble salts;

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<sup>15</sup> **DELETED** /Cion: "and".

<sup>16</sup> **DELETED** opposes the addition of a definition on remediation. **DELETED** suggests to add a reference to natural recovery, as contained in Article 13.

<sup>17</sup> **DELETED** are concerned that this provision may require a too onerous fine-scale assessment.

<sup>18</sup> The following new recital will be added: "Soil organic matter comprises, where it occurs, peat. The continued extraction of peat, which is permissible in principle as a source of raw material, may cause a decline in soil organic matter and therefore would have to be assessed against the levels of risk acceptability established by Member States pursuant to this Directive."

<sup>19</sup> The Presidency suggests the following amended new recital: "Soil compaction refers to the increase of bulk density and a decrease in soil porosity brought about by inappropriate land management practices and inappropriate use of heavy machinery. [...]".

- (v) landslides brought about by the down-slope, moderately rapid to rapid movement of masses of earth above the bedrock;<sup>20</sup>
- (vi) acidification by significantly decreasing the soil pH value. <sup>21</sup>

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<sup>20</sup> **DELETED** requests to delete landslides as a self-standing risk and argues that it is covered under "erosion".

<sup>21</sup> The following new recital on acidification will be added: "Acidification is a soil degradation process, particularly of concern in relation to productive soils. However, it is recognised that certain naturally occurring acid soils would need to be maintained in this state in order to perform their soil functions.".

*Article 3*  
*Integration*<sup>22</sup>

Without prejudice to and where not required by Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in the development of policies which can significantly exacerbate or reduce soil degradation processes, Member States shall take into account the impacts of such policies on those processes<sup>23</sup>, in particular in areas such as 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.

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<sup>22</sup> The Presidency suggests the following changes to recital 11 to clarify the aim of Article 3: "(11) Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of Community policies and activities, in particular with a view to promoting sustainable development. Given that numerous economic, environmental and social activities depend or have an impact on soil, there is a need to ensure that soil protection aspects are integrated into [...] policies which may [...] significantly exacerbate [...] soil degradation processes [...]. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment makes provision for this for certain plans and programmes. This Directive complements this duty by making it clear that [...] Member States need to [...] take into account the possible impact [...] on the prevention of soil degradation processes and the protection of soil functions in the concepts and principles which are the basis for decision-making in a wide range of [...] areas.[...] This requirement is of a procedural nature and can be implemented by [...] integration into existing procedures in Member States or incorporation into specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different policy making levels.

**DELETED** raise concerns in relation to this Article and its scope, as well as to the related expanded recital (which also poses difficulties to **DELETED**). **DELETED** notes the complexity of transposition of the provisions.

<sup>23</sup> **DELETED** prefers "soil-related concerns".

#### Article 4

##### *Precautionary and preventive measures*

For the purpose of preserving the soil functions and the sustainable use of soil referred to in Article 1(1), Member States shall ensure that appropriate and proportionate measures are taken<sup>24</sup>, according to national or regional circumstances:<sup>25</sup>

- (a) to prevent or minimise adverse effects from actions that Member States consider are likely to hamper significantly any of the soil functions referred to in Article 1(1);
- (b) to limit the intentional or unintentional introduction in order to avoid accumulation of those hazardous substances on or in the soil that would significantly hamper soil functions or give rise to significant risks to human health or the environment, excluding those due to long-range air deposition<sup>26</sup> and those due to a natural phenomenon of exceptional, inevitable and irresistible character;
- (c) to prevent the intentional and unintentional introduction of relevant hazardous substances on or in the soil by dumping, leaking or spilling.

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<sup>24</sup> **DELETED** : "that Member States consider to be appropriate and proportionate...".

<sup>25</sup> **DELETED** /Cion question the added value of the reference to different circumstances.

<sup>26</sup> **DELETED** have a reservation on the exclusion of air pollution; **DELETED** have a difficulty with the notion of "long-range" in relation to a large Member State.

The Presidency suggests the following new recital: "Soil functions may be hampered by air deposition. However, measures at source to prevent air pollution are dealt with in other EC legislation."

For the purpose of this Article, Member States may use their <sup>27</sup> existing national, regional and local measures and programmes already set up under national or Community legislation, including the CAP, <sup>28</sup> or international agreements as well as voluntary measures.

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<sup>27</sup> **DELETED** : "rely on", opposed by Cion who prefers to revert to "build upon".

<sup>28</sup> The Presidency proposes to add a new recital: "Existing national, regional and local measures and programmes already set up under national or Community legislation, such as under inter alia Directive 2008/01/EC concerning Integrated Pollution Prevention and Control, Directive 2000/60/EC establishing a framework for Community action in the field of water policy and its daughter Directives, and Directive 2004/35/3C concerning Environmental Liability, can be used [...] for precautionary and preventive measures."

<sup>29</sup> **DELETED** request additional exclusions/clarification of links in relation to existing EC legislation.

**DELETED** requests the addition of a paragraph stipulating that Member States would not be expected to lay down more stringent measures where activities are already regulated under Community legislation with the aim of soil protection.

## Article 5

### Sealing

For the purpose of preserving the soil functions and the sustainable use of soil referred to in Article 1(1), taking into account relevant environmental, social and economic benefits from sealing, Member States shall take appropriate and proportionate measures

- to contain<sup>30</sup> sealing, where necessary,

and

- where sealing is to be carried out, to mitigate its effects.<sup>31</sup>

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<sup>30</sup> Cion: "limit".

<sup>31</sup> **DELETED** and Cion request to revert to previous wording "which will allow as many of those functions as possible to be maintained".

**DELETED** requests measures "to reduce further sealing" and to "limit sealing to the extent that is necessary for technical or functional reasons".

**DELETED** request a reference to "high value soils".

The Presidency suggests to amend recital (13) as follows: "Sealing is becoming significantly more widespread in the Community as a result of urban development and construction of buildings and infrastructure and increasing demand for land from many sectors of the economy. This process has significant environmental, social and economic benefits but also result in the loss of soil quality and functionality which calls for a more sustainable use of soil as part of the environment. Recognising that it is not intended to prohibit urban development and that sustainable agriculture, forestry and nature conservation play a crucial role in maintaining soil quality and revitalising soil [...], particular attention should be paid to the effects of sealing on the soil resource. Where sealing does occur, appropriate and proportionate measures should be taken to ensure its effects are mitigated, for example through the use of suitable soil management techniques during construction and the use of sustainable drainage systems. For the purpose of containing sealing and reducing the depletion of greenfield sites, the rehabilitation and re-use of brown field sites should be encouraged.".

Furthermore the Presidency suggests amending recital (20) as follows: "In compliance with the prevention principle as laid down in Article 174 of the EC Treaty, this Directive should contribute to the prevention and reduction of the introduction of hazardous substances into soil to avoid soil contamination and to preserve soil functions. However, certain practices for overriding safety reasons such as sustainable use of de-icing salt may be continued.".

## Chapter II

### Soil Degradation Processes

#### SECTION ONE

#### IDENTIFICATION OF PRIORITY AREAS <sup>32</sup>

##### *Article 6*

##### *Identification of priority areas requiring special protection from soil degradation processes*

1. Member States shall identify priority areas, as defined in Article 2(9), on their national territory requiring special protection against soil degradation processes defined in Article 2(10).
  
2. By ...<sup>\*</sup>, and for the soil degradation processes erosion, organic matter decline, compaction, salinisation, landslides and acidification, Member States shall identify, having regard to paragraph 6, the soil degradation processes which are of relevance for their territory or part of their territory. For such degradation processes, Member States shall, at the administrative level and geographical scale that they consider appropriate:<sup>33</sup>
  - (a) evaluate, based on but not restricted to<sup>34</sup> the elements set out in the indicative list<sup>35</sup> in Annex I, the extent to which their national territory is subject or likely to be subject in the near future to, i.e. at risk of, such degradation processes;

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<sup>32</sup> **DELETED** have major concerns in relation to the "priority area" approach. **DELETED** suggests a different approach by which degradation processes and not priority areas would be identified.

<sup>\*</sup> 7 years after entry into force. **DELETED** requests 3 years more.

<sup>33</sup> The Presidency suggests to amend recital (14) as follows: "A targeted and efficient soil protection policy should be based on the knowledge of where degradation is occurring. It is recognised that certain degradation processes, such as erosion, organic matter decline, compaction, salinisation and landslides, occur only in specific areas which are more at risk of such processes. This requires the identification of such priority areas at the administrative level and geographical scale that Member States consider appropriate which could vary from area to area and from degradation process to degradation process.".

<sup>34</sup> **DELETED** : delete "based on but not restricted to", opposed by **DELETED** .

<sup>35</sup> **DELETED** and Cion are of the view that "indicative" is redundant, opposed by **DELETED**



- (b) establish the levels of risk acceptability<sup>36</sup>, which can vary from area to area, of the soil degradation processes, having regard to the objective of preserving soil functions pursuant to Article 1(1) and the sustainable use of soil;
- (c) identify priority areas on their national territory [...] that exceed the levels of acceptability established in point (b).<sup>37</sup>
3. For the purpose of the evaluation carried out under paragraph 2(a), Member States may base the identification of areas on empirical evidence or validated models. Where appropriate existing data, including maps and research, may be used.
4. For the purpose of paragraphs 2(b) and 2(c) Member States shall take into account, as far as relevant and<sup>38</sup> feasible, the effects of those processes on greenhouse gas emissions, desertification and soil biodiversity loss.
5. The priority areas identified pursuant to paragraph 2(c) shall be made public and updated at least every ten years.
6. Where, on the basis of the physical and climate characteristics of its territory, a Member State (a) considers that one or more of the soil degradation processes referred to in paragraph 2 are not occurring or will not be likely to occur in the near future in its territory or part of its territory at a level considered relevant with regard to the preservation of the soil functions pursuant to Article 1(1) and the sustainable use of soil;

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<sup>36</sup> **DELETED**, supported by **DELETED**: “the management method for”; **DELETED**: “acceptable risk”; **DELETED** opposes a risk assessment methodology including numerical values.

<sup>37</sup> **DELETED**: “within which the levels of acceptability established in point (b) are likely to be exceeded”.

<sup>38</sup> Cion does not support the deletion of “scientifically”.

(b) demonstrates that a priority area approach will not assist in addressing one or more of the degradation processes referred to in paragraph (2) which exceeds the levels of acceptability established under paragraph 2(b) because it is occurring across the whole of its territory or because it is so widely spread across its territory;

it shall notify the Commission thereof within four<sup>39</sup> years after entry into force of this Directive<sup>40</sup> and need not identify or establish an associated priority area or areas.

Where paragraph 6(b) is applied, the Member State shall put in place action programmes in accordance with Article 8 to address those degradation processes across its whole territory, for the purpose of preserving the soil functions pursuant to Article 1(1) and the sustainable use of soil.

7. Member States shall designate the competent authorities to be responsible for the identification of priority areas.

*(Article 7: deleted)*

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<sup>39</sup> **DELETED**: 7 years.

<sup>40</sup> **DELETED** requests clarification on what may follow after notification by a Member State that it does not consider to be concerned by a particular degradation process.

SECTION TWO  
ESTABLISHMENT OF TARGETS AND ACTION PROGRAMMES

*Article 8*

*Action Programmes to combat soil degradation processes*

1. For the purpose of preserving or, where technically feasible and costs are proportionate to the expected environmental and social benefits<sup>41</sup>, restoring the soil functions and ensuring the sustainable use of soil referred to in Article 1(1), Member States shall, in respect of the priority areas identified in accordance with Article 6 and the degradation processes referred to in Article 6(6)(b), draw up, at the administrative level and geographical scale that they consider appropriate, an action programme including at least risk reduction targets<sup>42</sup>, measures to reach those targets, a timetable for the implementation of those measures and an estimate<sup>43</sup> of the allocation of financial resources for their implementation. Such programmes may use<sup>44</sup> existing national, regional and local measures and programmes already set up under national or Community legislation or international agreements. The action programmes may include statutory, administrative or contractual measures, including cross-compliance and rural development measures within the CAP.<sup>45</sup>

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<sup>41</sup> See footnote on the same wording in Article 1(1), whereby **DELETED** could accept this wording in this Article.

<sup>42</sup> **DELETED**: "relevant targets"; **DELETED**: "or other relevant targets"; **DELETED**: "risk management approach"; **DELETED**: wording as in document 16157/07 ADD 1; Cion opposes "relevant targets".

The Presidency suggests amending recital (17) as follows: "Action is to be taken under the responsibility of Member States, at the most appropriate level, based on the establishment of risk reduction targets and programmes of measures to reach those targets. Such targets may refer to the intensity of the soil degradation process considered, to its frequency, to its extension or its risk of occurrence, as appropriate." **DELETED** requests a broader range of factors.

<sup>43</sup> **DELETED** request a reference that no new public money would be made available.

<sup>44</sup> Cion requests to revert to "build upon".

<sup>45</sup> The Presidency suggests amending recital (18) as follows: "Such action programmes [...] should take into account the social and economic impact of the measures envisaged; they should be reviewed periodically and may build on obligations, plans and programmes, including voluntary agreements, already set up under national or Community legislation (such as inter alia CAP cross-compliance and rural development measures) or international agreements. Existing voluntary agreements, voluntary Codes of Practice, covenants and other administrative and contractual measures may be included within the measures under the action programmes pursuant to this Directive insofar as they are appropriate to achieve the risk reduction targets set by Member States therein."

2. When drawing up and revising the various elements of the action programmes pursuant to paragraph 1, Member States shall give due consideration to the social and economic impacts, cost-effectiveness and technical feasibility of the measures envisaged as well as enhance coherence with existing national, regional and local measures and programmes, in particular those taken in the context of cross-compliance and rural development within the CAP. <sup>46</sup>

Member States shall indicate in their action programmes how the measures are to be implemented and how they will contribute to the achievement of the targets established in application of Article 8(1).

3. Where an area is identified as requiring special protection 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 degradation processes identified together with the appropriate measures for reaching those targets.

4. The action programme shall be drawn up by ... <sup>\*</sup> and shall be in application no later than by ... <sup>\*\*</sup>.

The action programme shall be made public and shall be updated at least every five years and reviewed at least every ten years.

*(Article 9: deleted)*

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<sup>46</sup> **DELETED** requests to delete the last phrase, opposed by **DELETED** .

<sup>\*</sup> 9 years after entry into force. **DELETED** requests 3 more years. **DELETED** : 10 years.

<sup>\*\*</sup> 10 years after entry into force. **DELETED** requests 3 more years. **DELETED** : 12 years.

## Chapter III

### Soil contamination

#### SECTION ONE

#### IDENTIFICATION AND INVENTORY

#### *Article 10*

#### *Identification and inventory of contaminated sites*

1. In order to ensure that soil contamination is addressed systematically, it is necessary for Member States to define and apply a general policy for contaminated sites, which shall rely on the obligations for identification of sites linked to potentially soil-contaminating activities, identification of contaminated sites, [...] soil status reports, and remediation of contaminated sites.
  
2. For the purposes of paragraph 1, Member States shall:
  - (a) within one year from [transposition date], adopt and make public<sup>47</sup>, a list, covering the whole territory of the Member State and at the administrative level that the Member State considers appropriate, of potentially soil-contaminating activities based on the activities set out in the indicative list in Annex II;<sup>48</sup>  
  
within seven years<sup>49</sup> from [transposition date], have identified, if they have not yet done so, the location of at least the sites where the potentially soil-contaminating activities as indicated in the list defined pursuant to the preceding subparagraph, are taking place or have taken place in the past.

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<sup>47</sup> **DELETED** is not in favour of making this list public; **DELETED** requests clarification in relation to obligations under Directive 2003/4/EC on public access to environmental information.

<sup>48</sup> **DELETED** /Cion oppose making the list in Annex II indicative; **DELETED** suggests a recital stressing further the indicative character.

<sup>49</sup> **DELETED**: 15 years.

The results of this identification shall be compiled in a register of sites linked to potentially soil-contaminating activities as defined in Article 2(7) which shall be updated at least every five years. Sites, where potentially contaminating activities are taking or have taken place, identified after this deadline shall continue to be assessed as provided for in paragraph 2(b), and identified as contaminated in accordance with paragraph 4 and be made subject to the prioritisation process provided for in paragraph 5, as appropriate. This register shall be taken into account for land use planning and development.<sup>50</sup>

(b)<sup>51</sup> for the sites identified in accordance with point (a), ensure that the competent authorities designated in paragraph 6 make sure that the specific identification procedure defined below to determine whether the site is a contaminated site is applied.

For the purpose of accelerating the identification of contaminated sites, Member States may take into account changes of land use on these sites as one of the triggers to apply this specific identification procedure.

This specific identification procedure shall include:

- (i) an analysis of the existing information on present and past activities on the site, in particular as regards the handling, the use and storage of relevant hazardous substances over time, and any evidence of accidents involving the emission of relevant hazardous substances;<sup>52</sup>
- (ii) an analysis of the presence of human or environmental receptors that could suffer from any contamination, taking into account all known relevant contaminant pathways;

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<sup>50</sup> **DELETED** suggests to move the last sentence before the preceding sentence; **DELETED** opposes this provision.

<sup>51</sup> **DELETED** oppose what they consider to be a non-targeted and too systematic approach.

<sup>52</sup> **DELETED** add "and".

(iii) if the analysis carried out under points (i) or (ii) indicate a significant probability<sup>53</sup> of a site being a contaminated site, Member States shall apply one of the following alternatives:

either

- ensure that the concentration levels of relevant hazardous substances linked to the activities carried out on the site are measured, and for that purpose, Member States shall establish the methodology necessary for determining those concentration levels.<sup>54</sup> For those sites where the concentration levels of relevant hazardous substances are such that there are sufficient reasons to believe that they may pose a significant risk to human health or the environment, Member States shall ensure that a site-specific risk assessment is carried out, which also takes into account the risk to groundwater;

or

- ensure that a site-specific risk assessment is carried out which also takes into account the risk to groundwater, and for that purpose, Member States shall establish the risk assessment methodology.<sup>55</sup>

If the assessments carried out pursuant to either point (i)<sup>56</sup>, (ii) or (iii) have concluded that there is no significant probability<sup>57</sup> that a site is contaminated, Member States are not required to investigate further that site. Where additional information is obtained which has the potential to result in a material change in the contamination status of a site, a revised site-specific risk assessment<sup>58</sup> shall be carried out in accordance with the specific investigation procedure described above.

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<sup>53</sup> **DELETED** /Cion oppose the addition of “significant” and request to revert to "possibility".  
<sup>54</sup> **DELETED** request moving provisions on chemical analysis into a recital.  
<sup>55</sup> **DELETED** oppose the degree of flexibility foreseen and prefer greater harmonisation.  
<sup>56</sup> **DELETED** /Cion oppose deletion of “and”.  
<sup>57</sup> **DELETED** revert to "possibility".  
<sup>58</sup> **DELETED** "the specific procedure as described above".

Member States may determine that a site is a contaminated site on the basis of the outcomes of either point (i), (ii) or (iii). Member States may proceed directly to the identification steps set out in point (iii) to determine whether a site is contaminated.

3. Member States may exempt from the identification procedures set out in paragraph 2(b):
- operating installations [as defined in Article 3(3) of the Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)] \* which have been granted a permit to operate that includes obligations to prevent soil contamination and to monitor the state of the soil.<sup>59</sup> The outcome of the monitoring shall be made available to the competent authorities for the purpose of Article 10(2)(b);
  - sites which they have already identified as contaminated sites prior to [transposition date];
  - sites which they have already identified as non contaminated sites prior to [transposition date], if the information on which the identification was based provided the same level of certainty as the provisions in paragraph 2(b) and if there have not been other changes which could influence the state of the soil.

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\* [OJ L ... (act not yet adopted)]

<sup>59</sup> **DELETED** prefer previous wording on operating installations which have been granted a permit and include monitoring obligations, without reference to IPPC Recast; **DELETED** requests to delete the last phrase on monitoring the state of the soil.



4. Member States shall, in accordance with the identification procedure laid down in paragraph 2(b), identify contaminated sites on their national territory. Member States shall establish an inventory or inventories of contaminated sites, covering the whole of their national territory, which shall be finalised within 25 years of [transposition date]<sup>60</sup>, having regard to continuous update requirements.<sup>61</sup> The inventory or inventories shall be made public and updated at least every five years in particular to include new contaminated sites that have been identified. When updating the inventory or inventories, Member States may exclude the sites which have undergone remediation.

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<sup>60</sup> **DELETED** oppose a timeline; **DELETED** suggests to add “in principle” and a review after 15 years, supported by **DELETED**.

<sup>61</sup> The Presidency suggests adding the following new recital (22a) "To monitor progress on the identification of the contaminated sites a timetable is needed. In enforcing this Directive, account should be taken of the fact that the identification of contaminated sites is a dynamic and continuous process as new contaminated sites may be identified or generated. Therefore by the deadline set in this Directive the identification exercise should be almost completed and only residual sites left to be included at a later stage in accordance with the requirements for update of the inventory. It is also for this reason that the present Directive provides for such requirement."

5. In order to have proactive and preventive actions and to maximise efficiency of the identification of contaminated sites, the identification procedure provided for in paragraph 2(b) shall be performed, if not already performed, on the basis of prioritisation to be established by the Member State within five years from [transposition date]<sup>62</sup>, at the administrative level and geographical scale that Member States consider appropriate. Such prioritisation shall give precedent to the investigation of those sites where hazardous substances as referred to in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006<sup>\*</sup> can be found, or to sensitive uses on sites according to the relevant receptors and to any other criteria that a Member State considers relevant on its territory<sup>63</sup>.

Furthermore, Member States should perform the identification procedure according to the following indicative timetable: <sup>64</sup>

- (i) within seven years from [transposition date], for at least 10 % of the sites <sup>65</sup> identified in accordance with paragraph 2(a);
- (ii) within 15 years from [transposition date], for at least 60 % of the sites identified in accordance with paragraph 2(a).

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<sup>62</sup> **DELETED** requests 9 years, **DELETED** 8 years; **DELETED** are not convinced that a timeline is needed.

<sup>\*</sup> OJ L 396, 30.12.2006, p. 1.

<sup>63</sup> **DELETED** suggest deletion of the elements which specify the prioritisation approach; Cion opposes the reference to "any other criteria".

The Presidency suggests amending recital (22) as follows: "In order to successfully prevent and limit risk to human health and the environment stemming from soil contamination, Member States should identify the sites which according to their assessment are posing a significant risk in this regard. Given the number of sites which are likely to be contaminated, their identification requires a systematic step-by-step approach and should be based on a prioritisation linked to the possible presence of substances that are carcinogenic, mutagenic, toxic for reproduction, persistent, bioaccumulative and toxic, or to sensitive land uses, for instance those involving the presence of young children, pregnant women, elderly people, protected habitats or species."

**DELETED** are not in favour of the proposed addition to the recital.

<sup>64</sup> **DELETED** /Cion oppose having an indicative timetable.

<sup>65</sup> **DELETED** question what 10 % of an unfinished list would be and prefer to delete the timetable.

6. The European Parliament and the Council shall, on the basis of a report by the Commission to be presented two years from the date referred to in paragraph 5(i), examine the practical experience gained in the Member States and progress made in the pursuance of the deadline and the targets established under paragraphs 4 and 5 respectively.

If appropriate, no later than one year after the adoption of the Commission report established pursuant to the preceding subparagraph, the European Parliament and the Council shall, in accordance with Article 251 of the Treaty, review the deadline established pursuant to paragraph (4).

7. Member States shall designate the competent authorities to be responsible for the identification of sites linked to potentially soil-contaminating activities and contaminated sites.

*(Article 11: deleted)*

#### *Article 12*

#### *Soil status report<sup>66</sup>*

1. Within one year from [transposition date], on a site on which an activity included in the list established pursuant to Article 10(2)(a) is taking place, on a site included in the national register of sites established pursuant to Article 10(2)(a), and on a site for which the official records, such as databases and cadastres, show such an activity has taken place in the past, Member States shall ensure that a soil status report is made available to the competent authorities as referred to in Article 10(7):

- by the owner of that site or the prospective buyer when the site is sold, making it also available to the other party in the transaction, and

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<sup>66</sup> **DELETED** are concerned about the costs and impacts on the housing market and requests to exclude small sites and private citizens from the requirements of producing soil status reports; **DELETED** is in favour of maximum flexibility for Member States in relation to the provisions for soil status reports.

- by the owner of that site or a relevant third party, when there are land use changes, including development, which the Member State considers relevant.
2. Without prejudice to Community and national liability regimes, the soil status report shall be issued by a body or person authorised by the Member State.
  3. Member States shall decide on the information that must be included in the soil status report which may vary according to the use of the land, the size of a proposed development or any other relevant factors.

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The soil status report shall, at least, contain information, including, if available, historical data, on the present and past activities on the site, and, if readily available, information on the handling, the use and storage of relevant hazardous substances over time and [...] any evidence of accidents involving the emission of relevant hazardous substances.

As part of the soil status report, Member States may require information on the presence of human and environmental receptors that could suffer from any contamination and a chemical analysis for all the sites referred to in paragraph 1, determining the concentration levels of the relevant hazardous substances in the soil, limited to those substances that are linked to the activities carried out on the site. For that purpose, Member States shall establish the methodology necessary for determining those concentration levels.<sup>68</sup>

4. Competent authorities may use the information contained in soil status reports for the purpose of identifying contaminated sites in accordance with Article 10.
5. Already existing and readily available information, such as official records, on the sites referred to in paragraph 1 shall be made available upon request to the owner of the site or to the prospective buyer or to a relevant third party for the purpose of producing the soil status report.

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<sup>67</sup> **DELETED**, supported by **DELETED**, suggests an additional sub-paragraph stipulating that Member States may establish thresholds or criteria below which no status reports would be required, such as for small sites.

<sup>68</sup> **DELETED** does not support this sub-paragraph.

6. Member States shall establish a period of validity for the soil status report that they consider appropriate, but not longer than 10 years. During such period, the same report can be made available for successive transactions, provided that there have not been other changes which could influence the state of the soil, taking into account the intended land use.

In case that on a specific site an activity included in the list established pursuant to Article 10(2)(a) has ceased, the most recent soil status report drawn up for this site after cessation of the activity shall be valid until an activity included in the list takes place again.<sup>69</sup>

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<sup>69</sup> **DELETED**/Cion have reservations on this sub-paragraph; **DELETED** suggests an additional reference "unless there have been significant changes".

**SECTION TWO**  
**REMEDIATION**

*Article 13*

*Remediation*

1. Member States shall ensure that the contaminated sites listed in their inventories of contaminated sites, pursuant to Article 10(4), are remediated<sup>70</sup> according to paragraph 2.<sup>71</sup> For that purpose, Member States shall have regard to the strategy drawn up pursuant to Article 14.

Without prejudice to the strategy drawn up pursuant to Article 14, Member States may require immediate remediation for any contaminated site and shall also ensure that, where imminent threats to human health or the environment exist, temporary and urgent measures are taken to limit or to prevent further adverse effects.

2. When deciding on the appropriate remediation actions, Member States shall give due consideration to social, economic and environmental impacts, cost-effectiveness and technical feasibility of the actions envisaged. In case of proven significant risks to water resources, remediation objectives shall be established taking into consideration relevant Community water legislation. Remediation action may consist of monitored natural recovery.
3. If the means required for remediation are not technically available or only available at a disproportionate cost with respect to expected environmental benefits, sites may be conditioned in such a way that they do not pose any significant risk to human health or the environment, including by restricting access to and use of them. For the same reason Member States may change the approved land use of a site to a less sensitive use, provided it will not pose any significant risk to human health or the environment.
4. Where containment, monitored natural recovery, restriction of access or land use change are applied, the evolution of the risk to human health or the environment shall be monitored.

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<sup>70</sup> **DELETED**: "or managed".

<sup>71</sup> **DELETED**: "and 3".

5. If not already established, and having regard to paragraph 2, Member States shall set up appropriate economic mechanisms to provide for the investigation and remediation of the contaminated sites for which, subject to the polluter pays principle, the natural or legal person responsible for the contamination cannot be identified or cannot be held liable under Community or national legislation<sup>72</sup> or may not be made to bear the costs of the investigation and remediation.<sup>73</sup>
6. Where, in the cases referred to above, Member States fund the investigation and remediation, they shall, where Member States consider appropriate, endeavour to recover the costs they have incurred in relation to the investigation and remedial measures taken pursuant to this Directive.

*Article 14*  
*Remediation strategy*<sup>74</sup>

1. Member States shall, on the basis of the inventory of contaminated sites and by ...<sup>\*</sup>, draw up a remediation strategy or strategies covering the whole of their national territory, including at least remediation targets, a prioritisation, taking particular account of significant risks to human health or the environment, a timetable and financial resources for implementation.
2. The remediation strategy shall be in application and made public by ...<sup>\*\*</sup>. It shall be reviewed at least every five years.

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<sup>72</sup> **DELETED** requests to add "except where a Member State considers that this would represent disproportionate costs".

<sup>73</sup> **DELETED** prefer a simple provision allowing Member States to decide to fund remediation, in order to be able to avoid lengthy legal disputes; **DELETED** requests deletion of this paragraph.

<sup>74</sup> **DELETED** does not see added value in this provision, as priorities are already defined in Article 10.

<sup>\*</sup> 9 years after entry into force. **DELETED** : 3 more years; **DELETED** : 10 years.

<sup>\*\*</sup> 10 years after entry into force. **DELETED** : 3 more years; **DELETED** : 12 years.

## **Chapter IV**

### **Awareness raising, reporting and exchange of information**

#### *Article 15*

#### *Awareness raising*

Member States shall take appropriate measures to raise awareness about the importance of soil for human, biodiversity and ecosystem survival, of preventive measures for preserving soil functions, to promote the transfer of knowledge and experience for a sustainable use of soil.

#### *Article 15a*

#### *Public participation*

1. For the purposes of this Article, "the public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.
2. Member States shall ensure that the public is given early and effective opportunities to participate in the preparation, modification and review of the action programmes referred to in Article 8, of the national list of activities referred to in Article 10(2)(a), of the prioritisation referred to in Article 10(5) and the remediation strategies referred to in Article 14.

To that end, Member States shall ensure that:

- (a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for these action programmes and remediation strategies or for their modification or review and that relevant information about such proposals is made available to the public including inter alia information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted;
- (b) the public is entitled to express comments and opinions when all options are open before decisions on the action programmes and remediation strategies are made;



- (c) in making those decisions, due account shall be taken of the results of public participation;
  - (d) having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.
3. Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection.

The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public to prepare and participate effectively.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation required by this Article.

4. This Article shall not apply to action programmes and remediation strategies for which a public participation procedure is carried out under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. \*

#### *Article 16*

#### *Reporting*

1. Member States shall indicate to the Commission by ... \*\*, and every five years thereafter<sup>75</sup>, how the following information to be made publicly available pursuant to this Directive can be accessed:
- (a) the priority areas identified pursuant to Article 6(2)(c);

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\* OJ L 197, 21.7.2001, p. 30.

\*\* 10 years after entry into force. **DELETED** : 3 years more.

<sup>75</sup> **DELETED** requests deletion of five-year requirement in paragraphs (1) and (2).

- (b) the action programmes drawn up pursuant to Article 8(1);
  - (c) a national list of activities which have a significant potential to cause soil contamination drawn up pursuant to Article 10(2)(a);
  - (d) prioritisation pursuant to Article 10(5);
  - (e) the inventory of contaminated sites established pursuant to Article 10(4);
  - (f) the remediation strategy or strategies adopted pursuant to Article 14(1);
2. Furthermore, Member States shall make the following information available to the Commission in an electronic format by ...<sup>\*</sup>, and every five years thereafter:
- (a) a summary of the measures taken pursuant to Article 5;
  - (b) the methodology used for identifying priority areas pursuant to Article 6(3);
  - (c) a summary containing the number of sites referred to in Article 10(2)(a) at the appropriate administrative level and specified by type of activity as well as the number of the sites fully investigated pursuant to Article 10(2) during the reporting period;
  - (d) metadata on priority areas identified pursuant to Article 6(2)(c) 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>;
  - (e) a summary of the measures taken pursuant to Article 15.

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<sup>\*</sup> 10 years after entry into force. **DELETED** : 3 years more.

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

*Article 17*

*Exchange of information*

By ...<sup>\*</sup>, the Commission shall set up a platform for the exchange of information between Member States and with stakeholders on the implementation of this Directive, particularly best practice for soil protection and remediation, the priority area identification pursuant to Article 6, on risk assessment methodologies for contaminated sites currently in use or under development, and on economic mechanisms.<sup>76</sup>

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

<sup>76</sup> The Presidency suggests adding the following new recital: "To achieve the highest possible comparability of methods and data, it is recommended that Member States preferably apply methods developed by CEN (European Committee for Standardisation) or ISO (International Committee for Standardization) or other validated or verified methods developed in accordance with scientific protocols and that are appropriate for the intended purpose." **DELETED** requests to delete the mention of economic mechanisms; **DELETED** requests to delete the suggested recital.

## Chapter V

### Final provisions

#### Article 18

##### *Implementation and adaptation to technical progress*

1. Indicative<sup>77</sup> Annexes I and II 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).<sup>78</sup>
2. Without prejudice to Article 10(2)(b), where, on the basis of the exchange of information referred to in Article 17, a need for increased coherence is identified, guidelines on common technical elements for soil contamination risk assessment, not having any bearing on the risk acceptability and designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure referred to in Article 19(2).<sup>79</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>77</sup> **DELETED** /Cion request the deletion of "indicative"; **DELETED** suggests adding a recital on the indicative nature of the annex under Article 10.

<sup>78</sup> **DELETED**: delete this paragraph.

The Presidency suggests to add the following text for a recital: "The adaptation of the indicative Annexes I and II to technical and scientific progress is aimed at assisting Member States in refining their lists of potentially soil-contaminating activities, as appropriate".

<sup>79</sup> **DELETED**: delete this paragraph.

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

<sup>80</sup> **DELETED** oppose a legally binding risk assessment procedure.

*Article 19*<sup>81</sup>

*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.

*Article 20*

*Commission report*

1. The Commission shall publish the first evaluation report on the implementation of this Directive within two years of receiving the action programmes 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.

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 ...<sup>\*</sup> and shall, where appropriate, propose any necessary amendments.

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<sup>81</sup> **DELETED** : delete this Article.

<sup>\*</sup> 15 years after entry into force.

## *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.

*[Article 23 : deleted]* <sup>82</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>82</sup> The Presidency suggests the following text for a recital: "Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage establishes that, for orphan sites, remedial action may be taken by the competent authority as a last resort. That provision is without prejudice to the general obligation laid down in this Directive to ensure that the contaminated sites identified are remediated."

\* 24 months after entry into force of this Directive. **DELETED** request 36 months.

\*\* 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*

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SECTION 1  
INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING  
SPECIAL PROTECTION FROM EROSION

Soil type (Soil Typological Unit (STU) level)
Soil texture (STU level): sand, silt and clay content
Topography: slope gradient and slope length
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Climate: precipitation (amount, duration, frequency, intensity and wind characteristics)
Soil density properties (STU level): bulk density and packing density (can be measured or derived)
Soil hydraulic properties (STU level): infiltration rate, permeability and water retention capacity (can be measured or derived)
Total soil organic carbon (g C/kg dry matter) (STU level) (can be measured or derived)
Land use, including land management, farming systems and forestry
Hydrological conditions
Agro-ecological zone

<sup>83</sup> Some of the elements contained in this Annex can be measured or derived, for instance through modelling or the use of pedo-transfer functions, on the basis of known information and measured data.



SECTION 2

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING  
SPECIAL PROTECTION FROM SOIL ORGANIC MATTER DECLINE

Soil type (Soil Typological Unit (STU) level)
Total soil organic carbon (g C/kg dry matter) (STU level) (can be measured or derived)
Climate: temperature and precipitation (amount)
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Soil texture (STU level): clay content
Stock of soil organic carbon (t C/ha) (STU level) (can be measured or derived)
Topography: slope, exposure and elevation
Land use, including land management, farming systems and forestry

SECTION 3

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING  
SPECIAL PROTECTION FROM COMPACTION

Soil type (Soil Typological Unit (STU) level)
Topsoil (30 cm or plough layer in arable land) and subsoil texture (STU level)
Climate: temperature, precipitation (distribution) and evapotranspiration
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Total soil organic carbon (STU level) (can be measured or derived)
Topsoil and subsoil bulk density (STU level) (can be measured or derived)
Topography: slope and land form
Land use, including land management, farming systems and forestry

SECTION 4

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING  
SPECIAL PROTECTION FROM SALINISATION

Soil type (Soil Typological Unit (STU) level)
Soil texture (STU level): sand, silt and clay content
Irrigation areas, chemical properties (pH, nature and content of salts) of irrigated water and type of irrigation techniques
Climate: temperature, precipitation (amount) and evaporation
Soil chemical properties (STU level): pH, electric conductivity and exchangeable sodium percentage
Soil hydraulic properties (STU level): infiltration rate, hydraulic conductivity, water retention and vertical and horizontal drainage characteristics (can be measured or derived)
Groundwater information: chemical properties (pH, nature and content of salts) and depth variation
Parent material: nature and chemical composition

SECTION 5

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING  
SPECIAL PROTECTION FROM LANDSLIDES

Soil properties (STU level): texture and permeability (permeability can be measured or derived)
Occurrence/density of existing landslides
Topography: slope length, breaks of slope, nature of slope
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Climate: precipitation (amount, duration, frequency and intensity)
Soil type (Soil Typological Unit (STU) level)
Bedrock and overlaying deposits (lithology, geotechnical and hydrogeological characteristics, nature of soil parent material) (STU level) (can be measured or derived)
Land use, including land management, farming systems and forestry
Seismic risk

SECTION 6

INDICATIVE ELEMENTS FOR THE IDENTIFICATION OF AREAS REQUIRING  
SPECIAL PROTECTION FROM ACIDIFICATION

Soil type (Soil Typological Unit (STU) level)
Soil texture (STU level): sand, silt and clay content
Parent material: nature and chemical composition
Soil chemical properties (STU level): pH and Base saturation (can be measured or derived)
Total soil organic carbon (STU level) (can be measured or derived)
Land cover and land cover change (e.g. following Corine Land Cover nomenclature)
Land use, including land management, farming systems and forestry
Climate: temperature, precipitation (amount) and evapotranspiration
Air deposition of acidifying substances

**Indicative<sup>84</sup> list of activities which have a significant potential to cause soil contamination referred to in Articles 10 and 12**

1. Establishments where relevant hazardous 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) \* .<sup>85</sup>
2. Sites where activities listed in Annex I to Council Directive 2008/01/EC, independently of the thresholds specified therein, 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 \*\* and except for the activities relative to the rearing of livestock<sup>86</sup>, take or have taken place.
3. Areas in airports where use, handling and storage of significant amounts of relevant hazardous substances occurs or has occurred.
4. Land-based areas in ports where use, handling and storage of significant amounts of relevant hazardous substances occurs or has occurred.
5. Areas in former military sites where use, handling and storage of significant amounts of relevant hazardous substances has occurred.
6. Petrol and filling stations.
7. Dry cleaners.<sup>87</sup>

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<sup>84</sup> **DELETED** /Cion oppose "indicative".

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

<sup>85</sup> **DELETED** requests to add "having as a priority the substances referred to in Article 57 of Regulation (EC) No 1907/2006".

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

<sup>86</sup> **DELETED** requests to add an exemption for the activities related to food industries.

<sup>87</sup> **DELETED** prefer to refer to "industrial" dry cleaners.

8. Mining installations, including extractive waste facilities as covered by Directive 2006/21/EC of the European Parliament and of the Council <sup>\*</sup>, but excluding waste facilities for inert waste, peat and unpolluted soil.
  9. Waste landfills as defined in Council Directive 1999/31/EC <sup>\*\*</sup>.
  10. Waste water treatment installations.
  11. Pumping stations, transfer points, joints and areas where leaks have been reported of pipelines for the transport of hazardous substances.
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<sup>\*</sup> OJ L 102, 11.4.2006, p. 15.

<sup>\*\*</sup> OJ L 182, 16.7.1999, p. 1.