



*EU Environmental Policy Briefing**

**French Presidency Proposals on the Soil Framework Directive – Revised
Document Leaked**

5 September 2008

On 20 December 2007 Europe's Environment Ministers failed to reach political agreement at the Council's first reading of the proposed soil framework Directive. Despite the best efforts of the Portuguese Presidency to negotiate a deal, and to the abject disappointment of many countries, a blocking minority was established by the UK, Germany, France, Austria and the Netherlands on the grounds of subsidiarity, proportionality and cost. The French Presidency has made reviving the Directive a key priority for their six-month term and has spent the summer holding bilateral discussions with key Member States.

The proposal is now scheduled for discussion at the October Environment Council. In preparation for this a document setting out proposed revisions to the Directive has been circulated by the Environment Ministry of France for discussion by the 'blocking' Member States¹. A copy of this document² was leaked in August. The revisions have met opposition by environmental groups and in the press, as they appear to water down obligations for Member States to identify, publish and ameliorate contaminated soils, and to reduce the effects of soil sealing. Generally the French Presidency are proposing language that caveats the Directive's provisions, allowing Member States to build upon existing national and regional measures and highlighting that measures should be appropriate and proportionate. The key changes being proposed are set out below and are likely to be of concern not only to the environmental community, but importantly to the 22 Member States who supported the original proposals.

General Provisions

The first revision to the proposal, in Article 1 (Subject-matter and Scope), states that any soil protection provisions contained in other Community legislation shall take precedence over the provisions of the Soil Directive. This shall apply in particular to Directives and Regulations concerning waste, water, pollution prevention and control, plant protection products, genetically modified organisms (GMOs), and other areas relating to agriculture, transport and climate change, as long as they contain reference and provisions to soil protection. Following consideration of the wording by IEEP, this appears an odd clause and would present Member States and the Commission

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with a minefield when it came to implementing the measure. It presents the potential for numerous legal challenges based on what might be considered a soil protection clause, and there are more appropriate mechanisms available for cross referring to the fact that the content of the Directive should not prejudice existing measures. The Directive was intended to address soil protection in its own right, strengthening the focus from that afforded under the current, fragmented approach, and the clause on precedence would potentially render this ineffectual. Moreover, it opens up the possibility of undermining the Directive, with potentially weaker approaches to soil protection taking precedence over this soil-specific measure.

Soil Contamination

The original provisions on soil contamination required Member States to identify and report areas of contaminated soil, in order to take prescribed steps for amelioration. Following the objection to these clauses by key Member States, justified by concerns related to subsidiarity, the leaked document offers greater flexibility to Member States on the design of these measures. This is seen as a significant concession to the demands of the blocking Member States. Under the proposals, Member States will be free to design the methods for identifying contaminated soil sites themselves, without specific instruction or procedure, and should publish contaminated site information within seven years of the Directive's transposition date. Moreover, once sites posing a risk are identified, Member States would be free to define their own approaches to remediation targets and undertaking remediation measures.

Further concessions requested by Germany, the Netherlands and Austria ask that no obligations are made to identify, publish and rectify contaminated areas, raising concerns that the Directive may be further weakened during the ongoing discussion process¹. The EEB has been critical of the stance of these Member States, believing that this would undermine the Directive's objectives by offering too much freedom to Member States, and leaving soils without adequate protection³.

Soil Sealing

The UK had cited the original provisions made on soil sealing as too strict. This is despite many considering them not to be prescriptive enough, as they required Member States to reduce soil sealing, but without providing great detail on the methods to achieve this¹. The new proposals provide much greater flexibility for Member States, with the admission that 'due consideration' should be given to requirements of urban development and construction. They also prescribe that Member States only need to analyse the extent to which soil sealing causes degradation problems, rather than to address their reduction^{1,2}.

Discussions between the blocking Member States will continue before formal Council debates in October. It is unclear what this process signals for the future of the Directive. There is no certainty that the other 22 Member States will accept a significantly weakened proposal, or that the European Parliament will accept the proposed changes. Therefore it is still not clear whether a 'weakened' version of the original Directive will ultimately be adopted, or whether the Directive will hang in political limbo and ultimately be abandoned. Both scenarios are of concern to those wishing to ensure the effective protection of the environment.

References

1. <http://euobserver.com/880/26566>
2. Leaked document of the French Environment Ministry, on revisions to proposals on the soil framework Directive. Note that this is not an official document of the French EU Presidency, which would require circulation amongst all Member States and the European Commission; but an interim negotiation position.
3. EEB Press Release 23 August 2008 - http://www.eeb.org/press/2008/230708-pr_is_soil_the_first_failure_French_Presidency.html

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