BUSINESSEUROPE

POSITION PAPER

8 November 2007

Position paper on the draft EU Framework Directive on Soil Protection

European industry recognises the valuable resource that soil represents and supports efforts to avoid damaging changes to European soils. However, industry severely doubts that the proposal for the Framework Directive on soil protection will help to achieve the commission's goal to protect the soil.

Industry is particularly affected by Chapter III of the draft Framework Directive on Soil Protection which deals with soil pollution and remediation. Especially, the obligation for measurements and the requirement for Soil Status Reports are heavy administrative burdens for both European industry and member states. Moreover, industry has concerns that the scope of the directive overlaps with over 20 other pieces of European legislation.

Furthermore, the proposal for the Directive does not take into account the subsidiarity and proportionality principles, in particular concerning soil contamination and remediation. Soil itself is not very mobile and has little opportunity to cross borders. Transboundary soil contamination is therefore almost inconceivable. Soil is also highly heterogeneous, so the problems vary widely. Soil contamination and remediation are already covered by national legislation in at least nine member states and should not be emphasised in the way they are in the proposal for a Directive. An over-centralised policy with uniform standards and strict rules will actually hamper sustainable soil management in countries where expertise and long-term experience is present.

European industry, therefore, especially rejects the proposals in Chapter III. The problem of soil pollution addressed there is, as a rule, of a local nature. Specifying European limit values – e.g. to remediate contaminated sites – is unnecessary as only limited areas would require remediation in the majority of cases. Above all, it is evident that limit values if at all have to be developed with respect to national circumstances alone.

In so far as this also applies to the remainder of the chapters of the draft Directive, all in all we do not consider the Directive a suitable instrument to resolve the problems of European soils and therefore recommend that it should be rejected.

In general, future European legislation on soil protection should take the following requirements into consideration:

- A risk-based approach to soil remediation, consistent with the use of the land should be adopted.
- Existing national soil legislation has to be considered. "Early actions" i.e. successful national regimes must not be hindered by European legislation.
- Ambiguity with existing legislation needs to be avoided (i.e. IPPC Directive, Mining Waste Directive, Waste Framework Directive, Landfill Directive, etc.).

THE CONFEDERATION OF EUROPEAN BUSINESS a.i.s.b.l.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@BUSINESSEUROPE.EU
WWW.BUSINESSEUROPE.EU

Moreover, soil excavated for mining purposes should by all means be excluded as it is used at a later stage for landscape remediation.
- Environmental legislation should not interfere with private land transaction procedures.
- As the subsidiarity principle should remain the guiding principle in European legislation, a European inventory of contaminated sites is not required.

Annex

Despite these general comments, industry has the following more detailed remarks on the draft Framework Directive:

I. Goal-oriented approach as regards use and protection

Industry welcomes the fact that the draft Framework Directive pursues a goal-oriented approach as regards use and protection. This is of key significance particularly when it comes to remediation. With regard to the remediation of contaminated sites, industry appreciates that, as a principle, various options for remediation, e.g. decontamination, securing and natural attenuation, are set out in the draft. Nevertheless, further options to remediate sites should be more detailed. This applies in particular to possible changes of use or restrictions of use. The standard for remediation should be that the previous use of the site should be reinstated taking economic considerations into account.

All in all, however, the Directive does not consistently implement the use-oriented approach, an approach otherwise to be welcomed. Rather, in numerous passages it formulates soil requirements without taking soil functions as set out in Art. 1 No.1 of the draft into due consideration. Due to the very specific wording of these protection objectives, it is doubtful whether it will be possible to engage in certain industrial activities which inevitably have an adverse impact on soil, such as raw material extraction, in future. The Directive should therefore ensure that when determining measures, in particular the various soil functions, equal emphasis should be laid on socio-economic aspects, concrete environmental conditions, the principle of proportionality and the subsequent use.

II. Activities approved in line with European provisions (Art. 10 and 11 of the Proposal in conjunction with Annex II)

One of the most critical points in the draft is the general suspicion that nearly all industrial activities potentially contaminate soil, e.g. in Annex II not only IPPC installations and dry cleaners but also ports and airports, as well as all mining installations. The perverse consequence is that those with environmental permits are singled out as sources of contamination. However, existing permits should not give rise to a general suspicion of contamination, at least as long as the approved activities have not been completed. For reasons of legal structure alone, a general contamination suspicion of approved installations or activities where the burden of proof is placed on the operator as regards the harmless nature of the approved activity should be abandoned.

A general suspicion of approved installations or activities will at best result in

potentially very complicated investigative measures relating to active industrial locations. This regulation will cause considerable and unnecessary costs and increase red tape. In the light of the investigations to be carried out irrespective of a concrete suspicion, there would appear to be no benefit for soil protection.

Exempting the smallest SMEs with less than ten members of staff and an annual turnover of less than two million Euro (cf. Annex II, Article 2, Point 3 of Recommendation 2003/361/EC, OJ. EC L 124 of 20.05.2003, p. 36 cont.) is not the proper answer to criticism of this regulation. Rather, it increases red tape in implementing the draft Directive and thus contradicts the rules of better regulation drawn up by the Commission.

III. Register of contaminated sites and remediation obligations of Member States (Art. 10, 13 and 14 of the Proposal)

The basic requirement of national and public registration of contamination (register of contaminated sites) and the resulting enforced remediation on a national basis with targets, deadlines and public reporting should be rejected as there seems to be no recognisable benefit for Europe. Due to budgetary restraints in most member states, there will not be a harmonisation of conditions of competition in between the member states as far as industry is concerned. Additionally, soils are vastly different from region to region. All in all, the proposals of the draft directive regarding the register and the remediation obligations do not take the subsidiarity principle in due account.

IV. Soil Status Report (Art. 12 of the Proposal)

Industry is opposed to a Soil Status Report on sites where soil-polluting activities are taking or have taken place which is available to the public. This prescription clearly interferes with private law. Information on private sites should not be open to the wider public but be restricted to the parties involved in the sales of sites. However, private law already offers sufficient scope for an appropriate balance of interests of the parties involved.

In addition, the report results in high and unnecessary costs for industry as these costs would be incurred even if the site concerned was not contaminated. The Directive would thus weakening Europe as a business location. Moreover, this type of cost distribution contradicts the polluter-pays principle (PPP) to which environmental legislation otherwise rightly adheres.

V. Reporting (Art. 16 of the Proposal)

The draft envisages a number of reporting obligations. In many cases they seem unnecessary. This is especially true for the obligation to report the outcome of the measurements of the contaminated sites as thus conclusions to business secrets of industry would be possible. Reporting should therefore be reduced to a meaningful and necessary minimum.

VI. Harmonising Risk Assessment Methodologies (Art. 18 and 19 of the Proposal)

According to Art.18 (2) and 19 of the proposal, the Commision shall determine common criteria for soil contamination risk assessment. The definition of these concrete requirements of the Framework Directive will be drawn up by a committee in line with Decision 1999/468/EC. As this committee is nominated exclusively by Member States it would appear uncertain whether the committee would take comprehensive expertise into account. Hence, industry proposes that industry experts should define the requirements of the material law of soil protection set out in the Directive in cooperation with the commission.