

Opinion of the Committee of the Regions on the thematic strategy for soil protection

(2007/C 146/05)

THE COMMITTEE OF THE REGIONS

- does believe that, from an environmental standpoint, there are a number of reasons for developing soil policy at EU level. Soil contamination, for example, is linked to human and animal health and soil policy has a role to play here. In addition, climate change, the transboundary impacts of soil degradation, the pressure caused on other environmental compartments, and the Kyoto agreements require attention at a European level;
- believes that a Directive which sets out to establish an inventory and assists the Member States to take action, as proposed by the Commission, may help to bring about sustainable soil management in the EU. This implies that the Directive should be of a flexible nature;
- expresses its concern over the administrative burdens which may arise, for local and regional authorities, as a result of the following requirements: the identification of areas at risk; the obligation to review, every ten years, the areas identified as being at risk (Article 6); and the obligation to review the inventory of contaminated sites (Articles 10 and 11);
- does not wish to see any direct obligations imposed upon the relevant authorities in respect of the actual cleaning-up and management of contaminated sites (Article 13);
- believes that there is a need for the European Commission to draw up a set of guideline measures, comprising cost-effective measures, from which the Member States can draw inspiration to compose their own package of measures, exercising their own judgement.

THE COMMITTEE OF THE REGIONS

Having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled *Thematic strategy for soil protection* (COM(2006) 231 final) and the Proposal for a Directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC (COM(2006) 232 final — 2006/0086 (COD));

Having regard to the decision of the European Commission of 22 September 2006 to consult it on this subject, under Article 175 and the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of its Bureau of 25 April 2006 to instruct the Commission for Sustainable Development to draw up an opinion on this subject;

Having regard to its opinion of 12 February 2003 on the Communication from the Commission entitled *Towards a thematic strategy for soil protection* — CdR 190/2002 fin (1);

Having regard to its draft opinion (CdR 321/2006 rev. 1) adopted on 27 November 2006 by its Commission for Sustainable Development (Rapporteur: Mr Cor Lamers (NL/EPP, Mayor of Houten);

adopted the following opinion at its 68th plenary session, held on 13 and 14 February 2007 (meeting of 13 February):

1. Views of the Committee of the Regions

General comments

1.1 Soil is of vital importance to the sustaining of human life. Soil provides an essential source of food and water and also plays a vital role in regulating various cycles, whilst providing a habitat for many organisms and serving as the basis for life above ground. For human beings and nature, it is vital that the soil is able to continue to fulfil these roles in an ongoing, optimal way.

1.2 All EU Member States have to contend, to a greater or lesser extent, with soil-related problems. There is no doubt that, in some parts of Europe, considerable and disturbing soil degradation processes have occurred and will continue to occur.

1.3 Soil is an immobile material, but soil degradation in one Member State can nevertheless have transboundary effects. The CoR believes therefore that the proposal is in line with the subsidiarity principle. The CoR also notes that only nine Member States have introduced a soil policy and that this policy is generally limited to certain aspects of soil contamination. The CoR does, in addition, believe that, from an environmental standpoint, there are a number of reasons for developing soil policy at EU level. Soil contamination, for example, is linked to human and animal health and soil policy has a role to play here. In addition, climate change, the transboundary impacts of soil degradation, the pressure caused on other environmental compartments, and the Kyoto agreements require attention at a European level.

1.4 Soil policy is a highly complex matter. In Europe there are over 320 different soil types, which are used for many different purposes. Soil does, for example, fulfil economic, social, cultural and environmental functions and is used in connection with agriculture, nature, construction and the building of roads and embankments. The threats confronting

soil in the various EU Member States are highly diverse. This leads to very considerable differences between individual Member States and even between the various regions within individual Member States. The various measures adopted by the Member States also differ considerably. Besides these geographical differences, there are climatic differences between Europe's regions. These differences chime with the responsibilities exercised by regional and local authorities in the Member States in this field.

1.5 In view of this great diversity and the difficulties in elaborating common standards, the CoR believes that for the time being it is not possible to adopt uniform EU quantitative standards. It believes nevertheless that the strategy presented by the Commission is a first step in the direction of reaching agreement on common standards in the near future. Tailor-made measures are necessary to ensure real protection for soil. Soil is a policy area which needs to be fleshed out primarily at local and regional level.

1.6 In the majority of EU Member States, responsibility for soil policy rests with local and regional authorities. These authorities should therefore play a major role in the development of new methods and measures in the field of soil policy.

1.7 The European Union, for its part, has to play a supporting and stimulating role in the field of soil policy. EU legislation in this field should be rejected unless it is flexible and provides the Member States with adequate room for manoeuvre in framing soil policy.

Objectives of the strategy

1.8 The CoR endorses the objectives of the strategy and takes the view that they make a major contribution towards the establishment of a flexible, common European policy framework for ensuring sustainable soil management.

(1) OJ C 128 of 29.5.2003, page 43.

1.9 The description of the objectives of the strategy lead the CoR to infer that the focus has been placed on expanding available knowledge in respect of soil processes and obliging the Member States to take action in this field. They are encouraged to take action to combat soil degradation but the actual identification of the areas at risk, the objectives to be pursued with a view to reducing soil degradation and the measures to be carried out to achieve these objectives is a task entrusted to the Member States themselves. The CoR endorses this approach as it enables soil issues to be tackled in an integrated and well-structured way, thereby emphasising the local and regional nature of this issue.

Integration of soil protection into EU and national legislation

1.10 With a view to implementing the proposed strategy, all the existing EU laws and policies of relevance to the soil issue should be systematically evaluated to determine the extent to which they are conducive to promoting sustainable soil in the EU. In cases where such laws or policies make an inadequate contribution to pursuing this goal, they should be adjusted accordingly. A plan of approach should be drawn up by the Commission in the short term with a view to achieving this goal.

1.11 For the abovementioned reasons the CoR takes the view that the proposed strategy should tie in more closely with the other strategies developed in the framework of the Sixth Environment Action Programme. In particular, there should be closer links with the strategies in respect of pesticides, waste and recycling, surface water and groundwater.

Best practice and knowledge in respect of soil processes

1.12 The CoR believes that information and communication have an important role to play in helping to bring about sustainable soil management. Threats confronting soil and how soil can help promote a sustainable society are two issues which need to be covered in this respect.

1.13 The measures taken by the Member States are characterised by considerable diversity (see point 1.4 above). The CoR believes that the quality of soil in Europe can be improved in an effective and practical way if Member States which have already introduced a soil policy transfer knowledge to the other Member States. The CoR advocates taking steps to enable those Member States already pursuing a fully-fledged soil policy share their experience with Member States which lack comprehensive legislation in this field.

1.14 The CoR attaches considerable value to the establishment of an open communication platform for exchanging information on best practice with a view to providing adequate protection of soil. In view of the variable nature of soil in the EU, there is a need to have a full picture of the measures which can be employed and which have proved their worth in practice.

The new framework Directive on soil protection

1.15 The aim of this framework Directive is to establish an inventory of soil degradation in the EU. It provides criteria for enabling such an inventory to be compiled in a uniform and

transparent way. Whether or not an area is designated as an area at risk, which measures, if any, are to be taken and the timeframe for such measures are to be determined by the Member State itself.

1.16 The CoR believes that a Directive which sets out to establish an inventory and assists the Member States to take action, as proposed by the Commission, may help to bring about sustainable soil management in the EU. This implies that the present Directive should be of a flexible nature and must not set out any quantitative and qualitative standards. These measures should be implemented on a voluntary basis by means of incentive and advisory schemes. Furthermore, an increase in documentation requirements should be prevented in order to combat unnecessary bureaucracy. At the same time, the present Commission proposals should not be seen as an invitation to far-reaching EU intervention.

1.17 The Committee believes that top priority must be given to national-level responsibility for achieving environmental standards, including liability and responsibility on the part of soil polluters and owners. This implies that there is a need to stipulate that, even when the polluter-pays principle is applied, the liability of not just the polluter but also additional obligated parties can be invoked. The Committee would stress that it must be prescribed at national level who, in the final analysis, is an obligated party.

1.18 The Committee expresses its concern over the fact that, for the purposes of formulating the specific requirements of the proposed EU Directive and, in particular, establishing the risk-assessment criteria in respect of soil contamination, recourse is to be had to a committee, in accordance with Decision 1999/468/EC (the 'Comitology Decision'). A procedure should be selected in this case which takes account of the interests of all stakeholders and ensures adequate participation.

Administrative burdens

1.19 Article 16 of the Directive defines a large number of reporting obligations to be met mainly by local and regional authorities. In the CoR's view, these provisions should not impose a disproportionate burden on local authorities and regions. It should be pointed out in this context that the amount of attention, manpower and financial resources devoted to drawing up reports cannot, at the same time, be devoted to measures to prevent soil degradation, even though reducing soil degradation should be the primary objective.

1.20 The CoR underscores the importance of the integration of soil policy into sectoral policies and provisions at every level of administration (Article 3). In the context of the implementation of sectoral policies, restraint should be exercised with regard to the introduction of compulsory checks on the basis of existing data (soil tests). Checks are only an important requirement in cases where soil is at risk. In view of the fact that the policy is already of the nature of a framework policy, the stipulation of soil tests in the implementing phase is generally unnecessary. In the case of complex and wide-ranging situations, the establishment of an environmental impact report is, in any case, already obligatory.

1.21 The CoR expresses its concern over the administrative burdens which may arise, for local and regional authorities, as a result of the following requirements: the identification of areas at risk; the obligation to review, every ten years, the areas identified as being at risk (Article 6); and the obligation to review the inventory of contaminated sites (Articles 10 and 11).

1.22 The Committee notes that the Proposal for a Directive sets out a series of recording and reporting obligations, together with requirements in respect of the drawing up of plans and programmes which may be subject to a strategic environmental assessment (SEA); these measures would involve a considerable additional administrative burden. The EU provisions must, as far as possible, refrain from stipulating reporting obligations and the drawing up of plans and programmes subject to SEAs.

1.23 The Committee takes the view that public involvement should be limited to those cases which are covered by the environmental information Directive.

Programmes of measures to combat soil degradation processes

1.24 The CoR does not wish to see any direct obligations imposed upon the relevant authorities in respect of the actual cleaning-up and management of contaminated sites (Article 13). The authorities ensure that a clean-up actually takes place. All these matters must be considered in the context of the laws and rules applicable in the Member State concerned and in the context of the specific local soil situation. The authorities in question remain, of course, responsible for ensuring that the issue of contaminated sites is tackled.

1.25 The CoR expresses its satisfaction with the proposed function-orientated remediation of degraded soils (Articles 1.1 and 13.2). Measures are proposed depending upon the (current) use being made of the soil.

1.26 The *impact assessment* states that measures to reduce soil degradation offer a considerable social return on investment. The Committee endorses this conclusion, but would point out that, in order to achieve this return, there first has to be investment in soil. Experience has shown that the implementation of soil remediation projects, e.g. for local authorities and regions, is often thwarted by lack of funds.

1.27 The CoR regards the introduction of the soil status report (Article 12) as providing support from the EU for the drawing up of inventories of contaminated sites since, on the one hand, the proposed report would help to keep inventories of contaminated sites up to date and, on the other hand, the report would provide purchasers of sites from other EU Member States with the requisite information in a transparent way and therefore prevent them from incurring economic loss. The proposed report thus gives substance, in a practical way to the 'polluter pays' principle referred to in Article 4.

1.28 The CoR takes the view that, when measures for preserving soil functions are being identified, attention should be paid

not only to social and economic aspects but also to safety aspects and the presence of subjects constituting archaeological, geological and geomorphological heritage (Article 8).

1.29 The Committee feels that the Commission's call for national funding mechanisms for the remediation of contaminated sites (Article 13) fails to take adequate account of the specific regional (funding) mechanisms already in place, which, in practice to date, have proved effective. The fear is that, in this area, EU rules will, if anything, be a hindrance.

Best practice

1.30 In the CoR's view, one of the cornerstones of the Commission's proposal is the planned establishment of a platform for the exchange of information (Article 17). In view of their practical expertise and the experience which they have acquired, regional and local authorities should participate actively in the proposed exchange of information.

2. Recommendations of the Committee of the Regions

2.1 The CoR believes that there is a need for the European Commission to draw up a set of guideline measures, comprising cost-effective measures, from which the Member States can draw inspiration to compose their own package of measures, exercising their own judgement. Those Member States which have not yet formulated a soil policy or are currently in the process of doing so will only be able to carry out effective work in this field if they are in possession of adequate knowledge.

2.2 The CoR proposes that, rather than introducing wide-ranging European reporting requirements, Member States should be able to employ their own reporting system and that the European Commission should be given access to the information concerned (Article 16).

2.3 Risk areas can be identified very specifically and in a way which involves placing a more limited administrative burden on the authorities concerned if a quick scan is first carried out to determine which risks are or are not applicable in (parts of) the soil in the Member State concerned (Article 6). As regards the review of the risk areas and the inventories of contaminated sites, a complete review is unnecessary. It may be sufficient to update the information using monitoring data.

2.4 The CoR calls for the research agenda of the European Commission as announced in the thematic strategy to be fleshed out and for priorities and a timetable to be defined. The impact which climate change has on the soil needs to be clearly identified as a matter of the utmost priority. It is well known that climate change leads, or may lead, to the accelerated decomposition of soil organic matter. In view of the very important role played by organic matter in the functioning of soil, climate change may have a very considerable impact on sustainable soil management.

Recommendation 1

Article 1

Commission text	CoR amendment
<p>1. This Directive establishes a framework for the protection of soil and the preservation of the capacity of soil to perform any of the following environmental, economic, social and cultural functions:</p> <p>a) biomass production, including in agriculture and forestry;</p> <p>b) storing, filtering and transforming nutrients, substances and water;</p> <p>c) biodiversity pool, such as habitats, species and genes;</p> <p>d) physical and cultural environment for humans and human activities;</p> <p>e) source of raw materials;</p> <p>f) acting as carbon pool;</p> <p>g) archive of geological and archaeological heritage.</p> <p>To that end, it lays down measures for the prevention of soil degradation processes, both occurring naturally and caused by a wide range of human activities, which undermine the capacity of a soil to perform those functions. Such measures include the mitigation of the effects of those processes, and the restoration and remediation of degraded soils to a level of functionality consistent at least with the current and approved future use.</p>	<p>1. This Directive establishes a framework for the protection of soil and the preservation of the capacity of soil to perform any of the following environmental, economic, social and cultural functions, <u>where applicable</u>:</p> <p>a) biomass production, including in agriculture and forestry;</p> <p>b) storing, filtering and transforming nutrients, substances and water;</p> <p>c) biodiversity pool, such as habitats, species and genes;</p> <p>d) physical and cultural environment for humans and human activities;</p> <p>e) source of raw materials;</p> <p>f) acting as carbon pool;</p> <p>g) archive of geological, <u>geomorphological</u> and archaeological heritage.</p> <p>To that end, it lays down measures for the prevention of soil degradation processes, both occurring naturally and caused by a wide range of human activities, which undermine the capacity of a soil to perform those functions. Such measures include the mitigation of the effects of those processes, and the restoration and remediation of degraded soils to a level of functionality consistent at least with the current and approved future use.</p>

Reason

It is clear from this article that the aim is to take action targeted at particular functions of soil. The Dutch version of this article refers in the first paragraph to 'Alle Hierna genoemde ... functies' ('All of the following ... functions'). This could be interpreted as setting a multifunctional requirement, whereby the soil has to be able to fulfil all the listed functions at the same time.

In addition to constituting an archive of geological and archaeological heritage, soil is also an archive of geomorphological heritage. The term 'geomorphological' signifies surface features of the landscape. In cases where such features are of special value, attention should be paid to ensuring their conservation.

Recommendation 2

Article 3

Commission text	CoR amendment
<p>In the development of sectoral policies likely to exacerbate or reduce soil degradation processes, Member States shall identify, describe and assess the impacts of such policies on these processes, in particular in the areas of regional and urban spatial planning, transport, energy, agriculture, rural development, forestry, raw material extraction, trade and industry, product policy, tourism, climate change, environment, nature and landscape.</p> <p>Member States shall make public those findings.</p>	<p>In the development of sectoral policies likely to exacerbate or reduce soil degradation processes, Member States shall identify, describe and assess the impacts of such policies on these processes, in particular in the areas of regional and urban spatial planning, transport, energy, agriculture, rural development, forestry, raw material extraction, trade and industry, product policy, tourism, climate change, environment, nature and landscape.</p> <p>Member States shall make public those findings. <u>In formulating EU policy and provisions, the Commission shall carry out external integration in respect of matters relating to soil.</u></p>

Reason

The CoR expresses its satisfaction with the practice of external integration, as described in Article 3. The CoR believes that this should not only be an obligation for the Member States but for the EU as well.

Recommendation 3

Article 6

Commission text	CoR amendment
<p>1. Within five years from [transposition date], Member States shall identify the areas in their national territory, at the appropriate level, where there is decisive evidence, or legitimate grounds for suspicion, that one or more of the following soil degradation processes has occurred or is likely to occur in the near future, hereinafter 'the risk areas':</p> <p>a) erosion by water or wind;</p> <p>b) organic matter decline brought about by a steady downward trend in the organic fraction of the soil, excluding undecayed plant and animal residues, their partial decomposition products, and the soil biomass;</p> <p>c) compaction through an increase in bulk density and a decrease in soil porosity;</p> <p>e) salinisation through the accumulation in soil of soluble salts;</p> <p>f) landslides brought about by the down-slope, moderately rapid to rapid movement of masses of soil and rock material.</p> <p>For the purposes of that identification, Member States shall, in respect of each of those soil degradation processes use at least the elements listed in Annex I and shall take into account the effects of those processes in exacerbating greenhouse gas emissions and desertification.</p> <p>2. The risk areas identified pursuant to paragraph 1 shall be made public and reviewed at least every ten years.</p>	<p>1. Within five years from [transposition date], Member States shall identify the areas in their national territory, at <u>what is, in their judgement, deemed to be the appropriate administrative and geographical levels</u> where there is decisive evidence, or legitimate grounds for suspicion, that one or more of the following soil degradation processes has occurred or is likely to occur in the near future, hereinafter 'the risk areas':</p> <p>a) erosion by water or wind;</p> <p>b) organic matter decline brought about by a steady downward trend in the organic fraction of the soil, excluding undecayed plant and animal residues, their partial decomposition products, and the soil biomass;</p> <p>c) compaction through an increase in bulk density and a decrease in soil porosity;</p> <p>e) salinisation through the accumulation in soil of soluble salts;</p> <p>f) landslides brought about by the down-slope, moderately rapid to rapid movement of masses of soil and rock material.</p> <p>For the purposes of that identification, Member States shall, in respect of each of those soil degradation processes use at least <u>carry out a quick scan to determine which processes are not relevant in the case of (part of) the soil in the Member State concerned. As regards the remaining soil degradation processes, a list shall be drawn up setting out areas which are potentially at risk. The areas ultimately classified as being at risk shall be determined by scrutinising more closely the list of areas which are potentially at risk and, to this end, use shall be made at least of the elements listed in Annex I and shall take into account shall be taken of the effects of those processes in exacerbating greenhouse gas emissions and desertification.</u></p> <p>2. The risk areas identified pursuant to paragraph 1 shall be made public and reviewed <u>updated</u> at least every ten years.</p>

Reason

Article 6(1): It shall be up to the Member States themselves to determine the administrative and geographic levels to be applied when identifying the areas at risk. The choice of measures to be adopted in the risk areas is a political decision to be taken by the Member State itself. Before the at risk areas are identified, a quick scan should be carried out in order to exclude a number of issues. Further investigation needs to be justified. On the basis of the initial process of elimination, a more detailed identification of the risk areas can be undertaken on the basis of the elements listed in Annex I. By way of example, the case of organic matter may be quoted. In agricultural areas, organic matter content differs from plot to plot (heterogeneous areas). Organic content takes a long time to be restored and this process often takes place at the level of individual plots. This issue needs to be tackled primarily by means of cross-compliance and good agricultural practice.

Article 6(2): The term 'reviewed' employed by the Commission suggests that the list of risk areas needs to be subject to comprehensive scrutiny every ten years. What is important, however, is for Member States to maintain a good monitoring system with the aid of which the list of risk areas can be updated every ten years.

Recommendation 4

Article 8

Commission text	CoR amendment
<p>1. For the purposes of preserving the soil functions referred to in Article 1(1), Member States shall in respect of the risk areas identified in accordance with Article 6, draw up, at the appropriate level, a programme of measures including at least risk reduction targets, the appropriate measures for reaching those targets, a timetable for the implementation of those measures and an estimate of the allocation of private or public means for the funding of those measures.</p> <p>2. When drawing up and revising the programmes of measures pursuant to paragraph 1, Member States shall give due consideration to the social and economic impacts of the measures envisaged.</p> <p>Member States shall ensure that measures are cost-effective, technically feasible and shall carry out impact assessments, including cost-benefit analyses, prior to the introduction of the programmes of measures.</p> <p>Member States shall indicate in their programmes of measures how the measures are to be implemented and how they will contribute to achievement of the environmental targets established.</p> <p>3. Where an area is at risk from different concurrent soil degradation processes, Member States may adopt a single programme in which appropriate risk reduction targets are to be set for all the risks identified together with the appropriate measures for reaching those targets.</p> <p>4. The programme of measures shall be drawn up within seven years from [transposition date] and shall be in application no later than eight years after that date.</p> <p>The programme of measures shall be made public and shall be reviewed at least every five years.</p>	<p>1. For the purposes of preserving the soil functions referred to in Article 1(1), Member States shall in respect of the risk areas identified in accordance with Article 6, draw up, at <u>what is, in their judgement, deemed to be the appropriate and geographical levels</u>, a programme of measures including at least risk reduction targets, the appropriate measures for reaching those targets, a timetable for the implementation of those measures and an estimate of the allocation of private or public means for the funding of those measures.</p> <p>2. When drawing up and revising the programmes of measures pursuant to paragraph 1, Member States shall give due consideration to the social and economic impacts of the measures envisaged, <u>as well as the impact on safety and on the archaeological, geomorphological and geological heritage</u>.</p> <p>Member States shall ensure that measures are cost-effective, technically feasible and shall carry out impact assessments, including cost-benefit analyses, prior to the introduction of the programmes of measures.</p> <p>Member States shall indicate in their programmes of measures how the measures are to be implemented and how they will contribute to achievement of the environmental targets established.</p> <p>3. Where an area is at risk from different concurrent soil degradation processes, Member States may adopt a single programme in which appropriate risk reduction targets are to be set for all the risks identified together with the appropriate measures for reaching those targets.</p> <p>4. The programme of measures shall be drawn up within seven five years from [transposition date] <u>the date of publication by the European Commission of the set of guideline measures referred to in Article 17(2)</u> and shall be in application no later than eight <u>four</u> years after that date.</p> <p>The programme of measures shall be made public and shall be reviewed at least every five years.</p>

Reason

Article 8(2): In the CoR's view, it is not enough to give consideration solely to the social and economic impact. The impact on safety and on the geomorphological, geological and archaeological heritage is also important.

The measures are to be financed by the Member States themselves. It is therefore unnecessary for an EU Directive to instruct the Member States to take measures which are cost-effective.

Article 8(4): In the proposal for a Directive, the Commission takes as the starting point the date on which the Directive comes into force. Before national, regional and local authorities can draw up and implement measures, however, they need to be in possession of adequate information on the relevant possibilities. The drawing-up of a set of guideline, cost-effective measures on the basis of which the authorities in question can formulate their policy is an essential prerequisite in this context (see also Recommendations 9 and 10). This would provide significant added value for the European Commission. The CoR therefore believes that the date of publication of the abovementioned set of guideline measures represents a better starting point.

Recommendation 5

Article 10

Commission text	CoR amendment
<p>1. Member States shall, in accordance with the procedure laid down in Article 11, identify the sites in their national territory where there is 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, hereinafter 'contaminated sites'.</p> <p>That risk shall be evaluated taking into account current and approved future use of the land.</p> <p>2. Member States shall establish a national inventory of contaminated sites, hereinafter 'the inventory'. The inventory shall be made public and reviewed at least every five years.</p>	<p>1. Member States shall, in accordance with the procedure laid down in Article 11, identify the sites in their national territory where there is 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, hereinafter 'contaminated sites'.</p> <p>That risk shall be evaluated taking into account current and approved future use of the land.</p> <p>2. Member States shall establish a national inventory of contaminated sites, hereinafter 'the inventory'. The inventory shall be made public and, where necessary, updated every five years <u>reviewed at least every five years.</u></p>

Reason

The term 'reviewed' employed by the Commission suggests that the inventory of contaminated sites needs to be subject to comprehensive scrutiny every five years. What is important, however, is for Member States to maintain a good monitoring system with the aid of which the inventory can be updated every five years.

Recommendation 6

Article 11

Commission text	CoR amendment
<p>1. Each Member State shall designate a competent authority to be responsible for the identification of contaminated sites.</p> <p>2. Within five years from [transposition date], the competent authorities shall have identified the location of at least the sites where the potentially soil-polluting activities referred to in Annex II are taking place or have taken place in the past.</p> <p>For those purposes, the activities referred to in point 2 of Annex II shall be considered independently of the thresholds specified in Annex I to Council Directive 96/61/EC, 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 those relative to the rearing of livestock.</p> <p>The identification shall be reviewed at regular intervals.</p> <p>3. In accordance with the following time-table, the competent authorities shall measure the concentration levels of dangerous substances in the sites identified in accordance with paragraph 2, and where the levels are such that there may be sufficient reasons to believe that they pose a significant risk to human health or the environment, an on-site risk assessment shall be carried out in relation to those sites:</p> <p>a) within five years from [transposition date], for at least 10% of the sites;</p> <p>b) within 15 years from [transposition date], for at least 60% of the sites;</p> <p>c) within 25 years from [transposition date], for the remaining sites.</p>	<p>1. Each Member State shall designate a competent authority to be responsible for the identification of contaminated sites.</p> <p>2. Within five years from [transposition date], the competent authorities shall have identified the location of at least the sites where the potentially soil-polluting activities referred to in Annex II are taking place or have taken place in the past.</p> <p>For those purposes, the activities referred to in point 2 of Annex II shall be considered independently of the thresholds specified in Annex I to Council Directive 96/61/EC, 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 those relative to the rearing of livestock.</p> <p>The identification shall be reviewed updated at regular intervals.</p> <p>3. In accordance with the following time-table, the competent authorities shall measure the concentration levels of dangerous substances in the sites identified in accordance with paragraph 2 <u>ensure that a clear picture of the contamination situation in respect of the sites identified in accordance with the method described in Article 11(2) is established</u>, and where the levels are such that there may be sufficient reasons to believe that they pose a significant risk to human health or the environment, <u>ensure that an on-site risk assessment</u> on-site risk assessment shall be carried out in relation to those sites:</p>

Commission text	CoR amendment
	a) within five years from [transposition date], for at least 10% of the sites; b) within 15 years from [transposition date], for at least 60% of the sites; c) within 25 years from [transposition date], for the remaining sites.

Reason

The competent authorities are responsible for identifying the contaminated sites and any risk they pose for human health and the environment. This does not imply that the competent authorities have themselves to carry out investigations at the sites in question. In general, it is expected that, initially, the party causing the contamination or the owner or user of the site shall establish a clear picture of the contamination. In cases where it is no longer possible to contact any party with regard to the contamination, the competent authorities may decide to carry out the investigation themselves.

Recommendation 7

Article 12

Commission text	CoR amendment
2. The soil status report shall be issued by an authorised body or person appointed by the Member State. It shall include at least the following details: a) the background history of the site, as available from official records; b) a chemical analysis determining the concentration levels of the dangerous substances in the soil, limited to those substances that are linked to the potentially polluting activity on the site; c) the concentration levels at which there are sufficient reasons to believe that the dangerous substances concerned pose a significant risk to human health or to the environment.	2. The soil status report shall be issued by an authorised body or person appointed by the Member State. It shall include at least the following details: a) the background history of the site, as available from official records; b) a chemical analysis determining the concentration levels of the dangerous substances in the soil, limited to those substances that are linked to the potentially polluting activity on the site; c) the concentration levels at which there are sufficient reasons to believe that the dangerous substances concerned pose a significant risk to human health or to the environment. <u>Account shall be taken in this context of (a) the policy pursued in the Member State concerned with regard to addressing risks and soil remediation and (b) specific local soil conditions.</u>

Reason

It may be inferred from Article 12(2)(c) that there is *one* list of concentration levels relating to risks. In the CoR's view, any risks to human health and the environment depend upon the use which is made of the site. Furthermore, this use may change following the sale of the site.

If there is a desire for the soil status report to include a judgement on the possible risks of the site in question, a risk assessment needs to be carried out and this assessment must take account of the current and approved future use of the site.

The soil status report model needs to leave scope for interpreting the data, taking account of the policy pursued in the Member State concerned with regard to addressing risks and soil remediation.

Recommendation 8

Article 13

Commission text	CoR amendment
<p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;">Remediation</p> <p>1. Member States shall ensure that the contaminated sites listed in their inventories are remediated.</p> <p>2. Remediation shall consist of actions on the soil aimed at the removal, control, containment or reduction of contaminants so that the contaminated site, taking account of its current use and approved future use, no longer poses any significant risk to human health or the environment.</p> <p>3. Member States shall set up appropriate mechanisms to fund the remediation of the contaminated sites for which, subject to the polluter pays principle, the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of remediation.</p>	<p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;">Remediation</p> <p>1. Member States shall ensure that the contaminated sites listed in their inventories are remediated.</p> <p>2. Remediation shall consist of actions on the soil aimed at the removal, control, containment or reduction of contaminants so that the contaminated site, taking account of its current use and approved future use, no longer poses any significant risk to human health or the environment.</p> <p>3. <u>Before the actual remediation work begins, temporary measures may be taken provided that they exclude the possibility of contact with the polluting substances, are duly justified and do not continue for too long.</u></p> <p>4.3. Member States shall set up appropriate mechanisms to fund the remediation of the contaminated sites for which, subject to the polluter pays principle, the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of remediation. <u>Available EU funding may be used to fund remediation.</u></p>

Reason

Actual remediation measures may be postponed, provided such an approach is environmentally sound, if such measures can be carried out in a more cost-effective way in combination with other activities, such as spatial development (building plans, etc.). Should the actual remediation measures be postponed, temporary safety measures need to be taken.

Recommendation 9

Article 16

Commission text	CoR amendment
<p>1. Member States shall make the following information available to the Commission within eight years from [transposition date], and every five years thereafter:</p> <p>a) summary of the initiatives taken pursuant to Article 5;</p> <p>b) the risk areas established pursuant to Article 6(1);</p> <p>c) the methodology used for risk identification pursuant to Article 7;</p> <p>d) the programmes of measures adopted pursuant to Article 8 as well as an assessment of the efficiency of the measures to reduce the risk and occurrence of soil degradation processes;</p> <p>e) the outcome of the identification pursuant to Article 11(2) and (3) and the inventory of contaminated sites established pursuant to Article 10(2);</p> <p>f) the National Remediation Strategy adopted pursuant to Article 14;</p> <p>g) a summary of the initiatives taken pursuant to Article 15 as regards awareness raising.</p>	<p>1. Member States shall make the following information available to the Commission within eight years from [transposition date], and every five years thereafter, <u>give the Commission access to the data from which the following information can be obtained:</u></p> <p>a) a summary of the initiatives taken pursuant to Article 5;</p> <p>ab) the risk areas established pursuant to Article 6(1);</p> <p>b) the methodology used for risk identification pursuant to Article 7;</p> <p>d) the programmes of measures adopted pursuant to Article 8 as well as an assessment of the efficiency of the measures to reduce the risk and occurrence of soil degradation processes;</p> <p>c) the outcome of the identification pursuant to Article 11(2) and (3) and the inventory of contaminated sites established pursuant to Article 10(2);</p>

Commission text	CoR amendment
	<p>f) the National Remediation Strategy adopted pursuant to Article 14;</p> <p>g) a summary of the initiatives taken pursuant to Article 15 as regards awareness-raising.</p> <p><u>2. Member States shall within five years from the drawing-up of the set of guidance measures as stated in Article 17(2), and every five years thereafter, give the Commission access to the data from which the following information can be obtained:</u></p> <p><u>a) a summary of the initiatives taken pursuant to Article 5;</u></p> <p><u>b) the programmes of measures adopted pursuant to Article 8 as well as an assessment of the effectiveness of the measures to reduce the risk and occurrence of soil degradation processes;</u></p> <p><u>c) the National Remediation Strategy adopted pursuant to Article 14;</u></p> <p><u>d) a summary of the initiatives taken pursuant to Article 15 as regards awareness-raising.</u></p> <p><u>3. For the provision of the data referred to in subparagraphs 1 and 2, Member States may make use of their own systems.</u></p>

Reason

This Article defines a large number of reporting requirements and it is mainly the local and regional authorities which will have to comply with these. The Committee believes that this constitutes a disproportionate administrative burden on municipalities and regions. The Committee therefore proposes that Member States use their own reporting systems and that the European Commission be given access to this information. In the Commission text the information requested under a, b, c, d, e, f and g is similarly described. The information requested will have to be supplied within eight years of the Directive entering into force. The Committee would prefer a sub-division of the type of information and would propose the following time schedules:

- 1) Member States identify the risk areas and draw up an inventory (see subparagraphs b, c and e of the Commission text);
- 2) the European Commission draws up a set of guideline measures, as referred to in Article 17 (see Recommendation 10);
- 3) Member States draw up a package of measures (see subparagraphs a, d, f and g of the Commission text).

Member States can only draw up such a package of measures and adopt them if they possess sufficient knowledge of and insight into soil protection. Knowledge is therefore a necessary prerequisite for the obligations under subparagraphs a, d, f and g of the Commission text. Experience with the Water Framework Directive as well as Community legislation with regard to air quality has shown that it is important that the European Commission should be required to draw up a set of guideline measures which reflect all knowledge, possible solutions and best practices, before Member States are obliged to draw up their package of measures. This particularly applies to subparagraph 1(a) of the Commission text on sealing. There is considerable lack of clarity about the measures which could prevent or reduce sealing. Solutions could be found in the fields of spatial development, construction technology and financial arrangements.

Recommendation 10

Article 17

Commission text	CoR amendment
<p>Within one year from [entry into force], the Commission shall set up a platform for the exchange of information between Member States and stakeholders on the risk area identification pursuant to Article 6 and on risk assessment methodologies for contaminated sites currently in use or under development.</p>	<p><u>1.</u> Within one year from [entry into force], the Commission shall set up a platform for the exchange of information between Member States and stakeholders on the risk area identification pursuant to Article 6 and on risk assessment methodologies for contaminated sites currently in use or under development.</p> <p><u>2.</u> <u>Within three years of the entry into force of this Directive, the European Commission shall have undertaken the activities announced in the Thematic Strategy for Soil Protection concerning the strategy for the implementation of the Directive. The aim of these activities is, among other things:</u></p> <p><u>a) to draw up a set of guideline measures including a summary of cost-effective measures which Member States will be able to implement at their own discretion;</u></p> <p><u>b) to draw up a set of guideline measures on best practices to reduce the negative effects of soil-sealing.</u></p> <p><u>3.</u> <u>Where, on the basis of the exchange of information referred to in subparagraph 1 of this Article, a need to harmonise the risk assessment methodologies for soil contamination is identified, the Commission shall, in accordance with Article 251 of the EC Treaty, propose common criteria for soil contamination risk assessment.</u></p>

Reason

Paragraph 2: In the Thematic Strategy for Soil Protection, the European Commission proposes to undertake activities to identify best practices. The Commission has stated that nine of the 25 Member States have developed a policy on soil. Action by national, regional and local authorities is essential for the success of the European soil strategy. A set of guidelines for cost-effective measures from which these authorities can draw up their policies is crucial for this (see also Recommendation 9).

Paragraph 3: In the Commission proposal this text is placed under Article 18(2). However, in view of the Committee procedure (see Recommendation 11) and because it is important for the drawing-up of best practices, this clause has been moved to Article 17.

Recommendation 11

Article 18

Commission text	CoR amendment
<p>2. Where, on the basis of the exchange of information referred to in Article 17, a need to harmonise the risk assessment methodologies for soil contamination is identified, the Commission shall adopt common criteria for soil contamination risk assessment in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).</p>	<p>2. Where, on the basis of the exchange of information referred to in Article 17, a need to harmonise the risk assessment methodologies for soil contamination is identified, the Commission shall adopt common criteria for soil contamination risk assessment in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).</p>

Reason

The Committee believes that the establishment of Community risk assessment methodologies for soil contamination situations can be of importance for an equal level of protection for people, plants and animals within the Community. The European Commission proposes to use the comitology procedure for these decisions. The Committee of the Regions believes that this decision has widespread implications for the scope of the EU soil legislation. Regional and local authorities should be involved in decision-taking on this issue. It is therefore proposed to leave a decision on these matters to a forum, as referred to in Article 17, and to let the European Parliament and the Council of Ministers adopt a decision at a later date.

Recommendation 12

Article 21

Commission text	CoR amendment
The Commission shall review this Directive at the latest [15 years after the date of entry into force] and shall, where appropriate, propose any necessary amendments.	The Commission shall review this Directive at the latest {15 years after the date of entry into force <u>publication of the set of guideline measures referred to in Article 17(2)</u> and shall, where appropriate, propose any necessary amendments.

Reason

The Commission text takes as its starting point the moment at which this Directive enters into force. However, measures by national, regional and local authorities are essential for the success of the European soil strategy. Local and regional authorities can only decide on a policy when they have at their disposal a set of guidelines for cost-effective measures (see also Recommendations 9 and 10). The Committee therefore believes that the date of publication of the guideline measures, i.e. the moment that the Member States have sufficient knowledge to adopt measures, is a better starting point.

Recommendation 13

Annex II

Commission text	CoR amendment
<u>ANNEX II</u> List of potentially soil polluting activities	<u>ANNEX II</u> List of potentially soil polluting activities
<ol style="list-style-type: none"> 1. Establishments where dangerous substances are or were present in quantities equal to or in excess of the amounts indicated in Parts 1 and 2, column 2 of Annex I to Council Directive 96/82/EC (Seveso). 2. Activities listed in Annex I to Council Directive 96/61/EC. 3. Airports. 4. Ports. 5. Former military sites. 6. Petrol and filling stations. 7. Dry cleaners. 8. Mining installations not covered by Council Directive 96/82/EC, including extractive waste facilities as defined in Directive 2006/21/EC of the European Parliament and of the Council. 9. Landfills of waste as defined in Council Directive 1999/31/EC. 10. Waste water treatment installations. 11. Pipelines for the transport of dangerous substances. 	<ol style="list-style-type: none"> 1. Establishments where dangerous substances are or were present in quantities equal to or in excess of the amounts indicated in Parts 1 and 2, column 2 of Annex I to Council Directive 96/82/EC (Seveso). 2. Activities listed in Annex I to Council Directive 96/61/EC. 3. Airports. 4. Ports. 5. Former military sites. 6. Petrol and filling stations. 7. Dry cleaners. 8. Mining installations not covered by Council Directive 96/82/EC, including extractive waste facilities as defined in Directive 2006/21/EC of the European Parliament and of the Council. 9. Landfills of waste as defined in Council Directive 1999/31/EC. 10. Waste water treatment installations. 11. Pipelines for the transport of dangerous substances, <u>to the extent that they have no strategic or military function.</u>

Reason

This could refer to large pipelines for gas and oil which are necessary for the adequate supply of energy sources as well as for military purposes. The Committee thinks that because of the need for continuity of the energy supply and the military aspects, the location of these pipelines cannot be made public. Public and easily accessible information about the location of these pipelines could after all be used for terrorist attacks.

Brussels, 13 February 2007.

The President
of the Committee of the Regions
Michel DELEBARRE
