

**Opinion of the European Economic and Social Committee on 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

(2007/C 168/05)

On 10 November 2006 the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 March 2007. The rapporteur was **Mr Nilsson**.

At its 435th plenary session, held on 25 and 26 April 2007 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 118 votes to 2 with 7 abstentions.

## 1. Gist of the opinion

1.1 The EESC welcomes the EU-level thematic strategy for soil protection and endorses, in principle, the establishment of a framework directive.

1.2 The strategy must focus on areas where the problem is the most serious and where the threat to arable land is greatest, e.g. change of soil use (where arable land is taken over for building, roads, etc.), polluted industrial areas and sealing of ground surfaces. The EU strategy must respect the subsidiarity principle.

1.3 The costs of soil degradation must be borne by those who are responsible for the damage in cases where this is proportionate, rather than primarily by the land user.

1.4 If the reason for using a framework directive is to ensure common ground, the Member States must have similar levels of ambition, in order to avoid any distortion of competition.

1.5 Good agricultural and forestry practices maintain and improve the soil.

1.6 By definition, when farmland is used for food production, natural land has been taken for cultivation purposes. Consequently, some impact is unavoidable.

1.7 The EESC condemns the Commission's failure thus far to present its redrafted proposal for a new revised sludge directive and calls on the Commission to present it without delay, as it is one of the mainstays in soil protection for agricultural land and for ensuring that contamination by dangerous substances does not increase.

1.8 Restoration of soil under Article 1 (subject-matter and scope) must be managed with regard to specific situations and assessed on a case-by-case basis.

1.9 The National sectoral policies identified in Article 3 must not lead to distortions of competition between the Member States.

1.10 Member State requirements under Article 4 must be reasonably proportionate.

1.11 Article 12 must be reworded with regard to the prospective buyer's obligation to provide a report in certain cases.

1.12 The penalties provided for under Article 22 must also be in reasonable proportion to the damage inflicted. The EESC believes it is unacceptable that the same damage can give rise to several different penalties.

1.13 The requirement for the operator to undertake remedial measures under Article 23 can only be justified if the operator has actually caused the damage.

1.14 The establishment of an independent committee of experts from the private and public sector would facilitate implementation of the soil strategy.

## 2. Gist of the Commission proposal

2.1 Soil can be considered a non-renewable resource, yet soil is rapidly degrading in many places across the EU exacerbated by human activity, such as industrial activities, tourism, urban development, transport infrastructure and certain agricultural and forestry practices.

2.2 Soil is a resource of common interest to the EU and failure to protect it at EU level will undermine sustainability and long term competitiveness in Europe. Different EU policies already contribute to soil protection but no coherent policy exists. Only nine Member States have specific legislation on soil protection, often covering a specific threat, in particular soil contamination. Soil degradation has strong impacts on other areas of common interest to the EU, such as water, human health, climate change, nature and biodiversity protection, and food safety.

2.3 Against this background, the Commission proposes a Soil Strategy for Europe. It is set out in a communication, accompanied by a proposal for a framework directive and an impact assessment. The framework directive sets out common principles, objectives and actions. It requires Member States to adopt a systematic approach to identifying and combating soil degradation, tackling precautionary measures and integrating soil protection into other policies. But it allows for flexibility; it is for the Member States to decide the level of ambition, specific targets and the measures to reach those. This is because soil degradation offers a very scattered picture throughout Europe, where 320 major soil types have been identified.

2.4 Member States are required to identify areas where there is a risk of erosion, organic matter decline, compaction, salinisation and landslides. They must set risk reduction targets for those areas and establish programmes of measures to achieve them. They will also have to prevent further contamination, establish an inventory of contaminated sites on their territory and draw up national remediation strategies. When a site is being sold, where a potentially contaminating activity has taken or is taking place, a soil status report has to be provided by the seller or the buyer to the administration and the other party in the transaction. Finally, the Member States are required to limit or mitigate the effects of sealing, for instance by rehabilitating brownfield sites.

### 3. General comments

3.1 The EESC welcomes the Commission Communication on a Thematic Strategy for soil protection, which is the follow-up to the previous 2002 <sup>(1)</sup> communication, and the proposal to establish a framework directive on soil protection. As early as the year 2000, an EESC own-initiative opinion on sewage sludge in agriculture <sup>(2)</sup> called on the Commission to introduce minimum requirements for soil protection.

3.2 In taking forward the soil protection strategy, the Commission has held a comprehensive, open consultation process involving many different parties over almost four years, and which the EESC was also able to follow. The comments contained in this opinion refer first and foremost to the proposed framework directive, on which the EESC has been consulted, but also, where applicable, to the Commission communication.

3.3 Soil and soil functions provide a precious resource for nature, and human and ecosystem survival. Human activity affects soil functions and soil use in various ways. An EU strategy must focus on areas where the threat to arable land is greatest, e.g. change of soil use, polluted industrial areas, sealing of ground surfaces and erosion.

3.4 Soil and soil functions are connected with several other policy areas which are variously regulated by both EU- and national legislation, e.g. the Water Directive, the Nitrates Directive, chemicals legislation, etc. Some countries already have various arrangements for regulating, monitoring and identifying soil and soil degradation; consequently the Commission proposal must not lead to a worsening of the situation but rather provide sufficient flexibility for these countries.

3.5 The Commission points out that the cost of soil degradation is not borne by land users but by society or other players. The EESC would point out that those who cause damage must be liable for it; generally speaking, it is not always land users who are at fault. In many cases, land users are subject to the effects of airborne pollution, pollution from other areas via industrial emissions, flooding and other polluting emissions; here, land users suffer adverse effects for which they are clearly not responsible.

3.6 The EESC notes, however, that the Commission consistently emphasises that protection measures must be implemented at source; this is clearly the correct approach, and will lead to a proper balance of responsibilities. It also means that legislative areas other than soil-specific areas are affected.

3.7 The EESC endorses the adoption of a specific strategy for soil protection, and the fact that this is to be delivered through a framework directive. This provides the basis for equal protection with common rules for problems which, by their very nature, can extend across borders. If, however, soil protection is to be genuinely enhanced, this policy area must also be integrated into other legislation.

3.8 The Commission also states that costs and benefits will vary depending on ambition levels and the extent to which existing potential is harnessed in, for example, the Common Agricultural Policy's environmental provisions. The EESC would stress that the problem of a uniform, safe legal interpretation and application of the Member States' cross-compliance requirements, as introduced into the Common Agricultural Policy, remains unresolved. If the aim of the framework directive is to provide a common basis for soil protection and to prevent operators from having to bear the brunt of greatly varying economic obligations, then the ambition levels must also be similar in order to prevent any distortion of competition.

3.9 As a first example, the Commission points out that factors such as unsuitable agricultural and forestry methods can contribute to soil degradation. On the contrary, when good farming practice is applied in agriculture and forestry, it helps to maintain or improve the soil. The threat to farmland comes from change of use, industrial expansion, transport installations, atmospheric pollution, ground level ozone and other pollutants. Although spatial planning (urban planning) is a Member State rather than an EU competence, this area must also be targeted.

<sup>(1)</sup> COM(2002) 179 final.

<sup>(2)</sup> CES 1199/2000, OJ C 14 of 16.1.2001, pp. 141-150.

3.10 Market forces and the present agricultural policy have also contributed to the increase in structural development and specialisation, and to separating, to a large extent, crop production from animal husbandry, which can lead to a reduction in organic waste in the soil. The new common agricultural policy with its decoupled payments actually makes this more likely.

3.11 The Commission considers that agriculture can have a positive effect on soil condition if the soil is managed ecologically, extensively and using an integrated approach. This is somewhat simplistic. Everything depends on the expertise and technology used in soil management. By definition, when farmland is used for food production, natural land has been taken for cultivation purposes. Consequently, some impact is unavoidable and must therefore be accepted if foodstuffs are to be produced. The impact on farmland depends on annual seasonal variation, climate, etc., but this does not mean that industrial substances, erosion, humus concentration, etc., must be accepted. Normal agricultural activity, using the expertise we have today, can in fact help to maintain and enhance soil quality. Few entrepreneurs take such a long-term approach to both investment and soil management as farmers and foresters. This high level of awareness of soil protection among farmers should be supported and complemented by advisory systems as well as voluntary measures and incentives.

3.12 The Commission further states that environmental protection is enhanced through the environmental liability directive<sup>(3)</sup>. This is a fair comment, but at the same time it should be pointed out that the fact that the same damage can give rise to up to three different penalties (withdrawal of aid, liability and administrative fees) as is currently the case, cannot be compatible with accepted legal opinion.

3.13 The EESC agrees that sustainable use of soil requires a comprehensive EU strategy for soil protection.

3.14 Implementation could be strengthened by creating an independent group of soil protection experts, with representatives from the public and private sector.

#### 4. Specific comments

4.1 The EESC condemns the Commission's failure to present the proposal to amend the directive on the use of sewage sludge in agriculture and permissible concentrations of heavy metals, which the Commission has been preparing for several years. In its communication on soil protection, the Commission states its intention to present such a proposal in 2007. The 2002 communication on a thematic strategy for soil protection stated that the review would be included in the soil strategy. This means that one of the most important measures for enhancing soil protection and safe food production has been considerably

delayed. It is therefore essential to publish the amended directive on the use of sewage sludge simultaneously with the adoption of the soil protection strategy.

4.1.1 The current sewage sludge directive<sup>(4)</sup> still permits high concentrations of heavy metals and other pollutants in sewage sludge that can be spread on farmland. The EESC would refer to the own-initiative opinion it adopted in the year 2000 on the revision of Council Directive 86/278/EEC on the use of sewage sludge in agriculture, which called for tougher requirements on permissible concentrations of heavy metals. Also, far too little is known about the content of chemical pollutants in general, how they interact and how they affect soil and food safety when spread on cultivated land.

4.1.2 The EESC takes this very seriously and would refer to a study presented by two researchers in *The Lancet* in November 2006. Although this is a one-off study the results show that well-known contaminants can have a hitherto unnoticed effect on brain development in foetuses and small children. The researchers believe that this could be linked to serious conditions such as autism, ADHD and retarded development. Many of these chemical also occur in household products. In various ways they end up in sewerage systems and we know far too little about how they affect the soil when sludge has been used as a fertilizer.

4.1.3 The EESC welcomes the fact that the Commission seems to have abandoned its previous position that the best use of sewage sludge, from an environmental perspective, is to spread it on arable land. The wording of the waste strategy communication<sup>(5)</sup> would seem to indicate this. The Commission also confirms here that it intends to put forward proposals for a revised sewage sludge directive, following on from the soil protection strategy. The EESC considers, however, that it should not have waited for this; it should have presented much earlier a radically revised directive on permissible concentrations of heavy metals and other pollutants in sewage sludge, particularly since the proposed directive states that this is needed in order to limit the introduction of dangerous substances into the soil.

4.1.4 Use of sewage sludge in agriculture and its concentrations of contaminants is one of the most important issues in soil protection and food safety. It also begs the question of whether soil users or sewage sludge producers, i.e. towns and municipalities, should be liable for any soil degradation. Liability and damages issues must be clarified in a revised sewage sludge directive.

<sup>(3)</sup> Directive 2004/35/EC.

<sup>(4)</sup> 86/278/EEC.

<sup>(5)</sup> COM(2005) 666 final.

4.1.5 New, safer chemicals legislation is also imperative for soil protection in general, and in particular to how society disposes of sewage sludge by spreading it on soil. It is essential to replace dangerous chemicals with less dangerous ones in order to achieve the required level of soil protection.

4.1.6 The EESC calls on the Commission to present forthwith the proposal for a revised directive and also to provide risk analyses for more substances than currently covered by the directive. This should be one of the most important factors in soil protection for arable land, to avoid any increase in contamination and to ensure satisfactory food safety levels.

4.2 Article 1 of the soil protection directive provides that degraded soil must be restored to a level of functionality consistent at least with the current and approved future use. The EESC endorses the principle but would question whether the framework directive really needs to specify 'at least'. The specific situation should be taken into account and decisions made on a case-by-case basis.

4.3 The EESC believes that the current wording of Article 3 could leave scope for the Member States to formulate a national sectoral policy that distorts competition. It is important that the article be confined to analysis, but any measures must comply with the requirements of a properly functioning internal market, common rules and fair competition.

4.4 The EESC also considers that Article 4 leaves scope for almost unbridled intervention. With regard to farmland, the EESC has pointed out above that cultivation has a de facto impact on the soil, one which varies with factors that the land user cannot influence, such as annual seasonal variation,

climate, etc. Member State requirements must be reasonably proportionate to this. Similarly, there must be reasonable compliance between Member State measures. This is also consistent with the provisions of Article 9 on proportionate measures to preserve soil functions.

4.5 Article 12 provides that in certain cases a landowner or prospective buyer must provide a soil status report. The EESC believes it would be wrong to require a prospective buyer to provide the report. Flexibility is needed to allow for differences in Member State legislation. Consequently the article must be reworded.

4.6 Article 17 refers to the voluntary platform that the Commission intends to establish. The Commission must actively ensure that this really does lead to an exchange of similar methods so that the approach will be uniform and a level playing field ensured. Since information is to be exchanged on a voluntary basis, active participation will also be required from the Commission.

4.7 Article 22 states that the Member States shall lay down the rules on penalties. The EESC considers that it is important, for the sake of legal certainty, that the penalties should be in reasonable proportion to the damage inflicted. It is also unacceptable that the same damage can give rise to several different penalties.

4.8 Article 23 proposes an amendment to Directive 2004/35/EC to enable the authorities to require the operator to undertake remedial measures. The EESC believes this can only be valid if the operator has actually caused the damage. This does not emerge clearly from the text.

Brussels, 25 April 2007.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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## APPENDIX

## to the Committee Opinion

The following amendment was rejected by the assembly, but was supported by more than a quarter of the votes cast:

**Point 1.1**

Amend as follows:

*'The EESC welcomes the EU-level thematic strategy for soil protection and endorses the aim behind the Commission proposal, namely the protection and sustainable use of soil. The EESC wishes that the proposed framework directive takes thoroughly into account the principles of subsidiarity and proportionality; in principle, the establishment of a framework directive ...'*

Voting

For: 47

Against: 54

Abstentions: 13

The following Section Opinion text was rejected in favour of an amendment adopted by the assembly, but was supported by more than a quarter of the votes cast:

**Point 1.15:**

*'The EESC calls on national and regional legislators and the Commission to systematically evaluate existing legislation of relevance to soil protection.'*

Outcome:

74 votes for deleting the phrase, 33 against and 15 abstentions.

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