

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2006/0086(COD) Procedure lapsed or withdrawn
Environment: strategy for the protection and sustainable use of soil	
Subject 3.70.01 Protection of natural resources: fauna, flora, nature, wildlife, countryside; biodiversity 3.70.06 Soil pollution, deterioration 3.70.20 Sustainable development	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ENVI Environment, Public Health and Food Safety		13/03/2012
		PPE WEISGERBER Anja	29/11/2005
		PPE-DE GUTIÉRREZ-CORTINES Cristina	
	Committee for opinion	Rapporteur for opinion	Appointed
AGRI Agriculture and Rural Development		05/06/2007	
	PPE-DE PARISH Neil		
	JURI Legal Affairs		24/10/2006
		PSE GERINGER DE OEDENBERG Lidia Joanna	
	ITRE Industry, Research and Energy		04/10/2006
		PSE CALABUIG RULL Joan	
Council of the European Union	Council configuration	Meeting	Date
	Environment	3002	15/03/2010
	Environment	2953	25/06/2009
	Environment	2898	20/10/2008
	Environment	2842	20/12/2007
	Environment	2812	28/06/2007
European Commission	Commission DG	Commissioner	
	Environment	POTOČNIK Janez	

Key events			
21/09/2006	Legislative proposal published	COM(2006)0232	Summary
26/10/2006	Committee referral announced in Parliament, 1st reading		
28/06/2007	Debate in Council	2812	

09/10/2007	Vote in committee, 1st reading		Summary
24/10/2007	Committee report tabled for plenary, 1st reading	A6-0410/2007	
12/11/2007	Debate in Parliament		
14/11/2007	Results of vote in Parliament		
14/11/2007	Decision by Parliament, 1st reading	T6-0509/2007	Summary
20/12/2007	Debate in Council	2842	Summary
20/10/2008	Debate in Council	2898	
25/06/2009	Debate in Council	2953	Summary
15/03/2010	Debate in Council	3002	Summary
21/05/2014	Proposal withdrawn by Commission		Summary

Technical information

Procedure reference	2006/0086(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 192-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ENVI/6/40878

Documentation gateway

Legislative proposal		COM(2006)0232	22/09/2006	EC	Summary
Committee of the Regions: opinion		CDR0321/2006	13/02/2007	CofR	
Economic and Social Committee: opinion, report		CES0603/2007	25/04/2007	ESC	
Committee opinion	AGRI	PE378.883	07/06/2007	EP	
Committee draft report		PE378.893	24/07/2007	EP	
Committee opinion	JURI	PE388.531	13/09/2007	EP	
Amendments tabled in committee		PE390.761	18/09/2007	EP	
Amendments tabled in committee		PE392.343	18/09/2007	EP	
Committee opinion	ITRE	PE384.271	20/09/2007	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0410/2007	24/10/2007	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0509/2007	14/11/2007	EP	Summary
Commission response to text adopted in plenary		SP(2007)6527	18/12/2007	EC	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Environment: strategy for the protection and sustainable use of soil

PURPOSE: to establish a framework for the protection of soil and to amend Directive 2004/35/EC.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: the purpose of this proposed Directive is to establish a common framework for the protection of soil. Soil is essentially a non renewable source. Available information indicates that there has been significant increase in soil degradation and evidence exists showing that this degradation process will continue.

Current Community provisions lay scattered across various sectoral acts including water, waste, chemical, industrial, pesticides and nature protection legislation. Provisions can also be found in the reformed Common Agricultural Policy. Their different objectives and scopes, however, means that the overall approach to soil protection at an EU level is fragmented. Hence the need for a framework Directive on the protection of soil across the EU. Of the various options available to the Commission, the Commission has opted for a framework Directive, which is flexible, ambitious in scope and not overly prescriptive in content. Member States will be free to define their own level of intervention allowing for a more efficient use of their national administrative capabilities.

The proposed legislation aims to protect soil and to preserve the capacity of soil to perform its environmental, economic, social and cultural functions. It is based on the precautionary principle and the principle of preventive actions; that environmental damage should be rectified at source and that the polluter should pay.

In essence, the Directive proposes the following provisions:

- The establishment of a common framework to protect soil. It is based on the principle of preserving soil functions, preventing soil degradation; mitigating the effects of soil degradation; restoring degraded soil and integrating soil issues into other sectoral policies.
- Allowing soil to continue with the vital role of: biomass production (agriculture and forestry); storing, filtering and transforming nutrients, substances and water; acting as a biodiversity pool; acting as a physical and cultural environment for humans and human activities; acting as a source of raw material; acting as a carbon pool and helping to archive the Community's archeologically heritage.
- In cases where other sectoral policies are likely to exacerbate or reduce soil degradation, Member State will be obliged to identify, describe and assess the impacts of such policies on the soil. This applies for example, to urban spatial planning, transport, energy, agriculture, rural development and forestry.
- In cases where a land user uses their soil in a way which can hamper soil functions, obliging them to take preventative precautions to minimise any adverse effects.
- Expecting Member States to take measures that limit sealing (the permanent covering of the soil surface with an impermeable material).
- Expecting Member States to identify the areas most at risk from soil erosion, organic matter decline, salinisation, compaction and landslides. The identification of risks will be carried out on common elements. Further, Member States will be asked to adopt risk reduction targets and programmes.
- Introducing measures which limit the leakage of dangerous substance into the soil.
- Setting up of an inventory of contaminated sites.
- Introducing a mechanism for funding the remediation of orphan sites.
- Requiring a soil status report.
- Establishing a national strategy to help remedy contaminated sites.
- Creating a definition of 'contaminated sites'.
- Setting up a list of activities that could, potentially, pollute sites.
- Obliging sellers and buyers to provide a soil status report for any transaction of land where a potentially contaminating activity has taken, or is taking place.

Action at a Community level is needed, argues the Commission, because soil degradation in one Member State or region can have trans-boundary consequences. For example, dams can become blocked and infrastructure damaged downstream by sediments massively eroded in another country further upstream. Differences in national soil protection measures can, in some cases, impose different obligations on economic operators thus creating a distortion of competition. Lastly, soil protection measures contribute to food safety and agricultural productivity. Having common principles to define facilitates research agendas at both a national and a Community level.

The proposal will have no impact on the Community budget.

Environment: strategy for the protection and sustainable use of soil

By adopting the report by Cristina GUTTIÉREZ-CORTINES (EPP-DE, ES), the Committee on the Environment, Public Health and Food Safety amended ? at 1st reading of the codecision procedure ? 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.

The report aims to include common objectives for soil protection by allowing Member States, in accordance with the subsidiarity principle, to define their own measures and to set up their own strategies and identification systems, based on their own methodologies.

MEPs underlined that the aim of this Directive is to ensure the protection of soil based on common objectives and respecting the existing national and Community legislation, in order to use the soil in a sustainable manner so that both current and future generations can satisfy their ecological, economic and social needs.

The committee has made some major changes to the Commission's draft proposal as follows:

- the common objectives of the directive have been better clarified: the objective of this Directive is to establish a framework for the protection and sustainable use of soil, based on the need to prevent soil degradation, in particular due to climate change, to mitigate its consequences and to restore or remediate degraded soils;
- these objectives must take into account the location specific conditions, and recognise that the soil is, like water, a shared resource for mankind, an ecosystem, a non-renewable resource and a platform for the following environmental, economic, social and cultural functions;
- the Directive lays down measures for the prevention and control of avoidable serious soil degradation, caused by a wide range of human activities, with due account also being taken of natural causes, which undermine the capacity of a soil to perform those functions. It lays down measures that improve the soil characteristics and functions, where appropriate;
- this Directive shall apply to soil forming the top layer of the earth's crust, including the liquid and gaseous components; it shall not apply to areas of land in respect of which, prior to [date of entry into force of the Directive];
- the term "risk areas" has been replaced by "priority areas". Moreover, a distinction has been made between "polluted" sites (the contamination is caused by man) and "geogenically contaminated soils" (the contamination is caused by geogenic sources, such as parent material and volcanic material);
- the term "contaminated site" means a site where there is a confirmed presence on or in the soil, caused by human activities, of dangerous substances of such a level that Member States consider the soil poses a significant risk to human health or the environment, taking the current and approved future use of the site into account;
- MEPs call on the Member States to establish national or regional inventories of contaminated sites which shall be made public and updated at least every 5 years, in particular to include new contaminated sites that have been identified and to exclude sites which have undergone remediation and no longer pose a significant risk to human health or the environment;
- the committee introduces the concept of "valuable soils" which means soils meriting protection due to their specific characteristics, structures, outstanding ecological, cultural and/or historical value or due to their use. Member States may promote measures and policies to increase awareness and scientific knowledge about these soils and to protect, preserve and improve their characteristics and functions where possible;
- the committee has also enhanced the role of exchange of information and coordination: in this context, it asks the Member States to develop voluntary codes of good practice as regards soil protection within five years from its transposition date. A thorough exchange of information is needed to promote the best practices for risk assessment, identification, information of the public and remediation;
- concerning agricultural use of soil, the committee proposes that each Member State, in accordance with its climate, soil characteristics and agriculture, as well as its best agricultural practices, may decide upon its own agricultural policy in relation to the soil. It also requests Member States to support agricultural practices which favour the filtering and water retention capacity of the soil, with a view to preventing compaction and erosion and that they promote and exploit research in particular as regards the functions of the different crops in relation to climate change and carbon capture with the aim of integrating this scientifically-based knowledge in the development of soil policy;
- MEPs call on the Member States to, within 7 years from the transposition date, ensure that a remediation strategy or strategies are drawn up at the administrative level they consider appropriate, including at least a procedure for setting remediation targets, a procedure for prioritisation, a timetable for implementation of remediation measures for contaminated sites;
- MEPs have deleted the article concerning the soil status report, where a site is to be sold on which a potentially polluting activity is taking place, or for which the official records, such as national registers, show that it has taken place, Member States shall ensure that the owner of that site or the prospective buyer makes a soil status report available to the competent authority and to the other party in the transaction;
- within 5 years from the transposition date, Member States shall identify the areas in their territory, the priority areas, which in their estimation require special protection against one or more of the following soil degradation processes: organic matter decline; an increase in bulk density and a decrease in soil porosity (compaction); salinisation; landslides; subsidence; desertification; adverse effects of climate change on the soil; soil biodiversity loss; acidification.

Environment: strategy for the protection and sustainable use of soil

The European Parliament adopted a resolution drafted by Cristina GUTTIÉREZ-CORTINES (EPP-DE, ES) and amended the proposal for a directive establishing a framework for the protection of soil and amending Directive 2004/35/EC. The resolution was adopted by 496 votes in favour to 161 against with 22 abstentions.

The main amendments were as follows:

Objectives: the objective of this Directive is to establish a framework for the protection and sustainable use of soil, based on the need to prevent soil degradation, in particular due to climate change, to mitigate its consequences and to restore or remediate degraded soils, taking into account the location specific conditions, and recognising that the soil is, like water, a shared resource for mankind, an ecosystem, a non-renewable resource and a platform for the following environmental, economic, social and cultural functions. These include the following: a)

a basis for life and biodiversity; (b) storing, acting as a buffer, filtering, and transforming nutrients, substances and water, and preserving ground- and surface water resources; c) basis for biomass production in agriculture and forestry; (d) physical and cultural environment for humans and human activities, including for towns and cities, infrastructure, recreation and other forms of public and economic use; (e) repository of raw materials; (f) acting as carbon pool; (g) archive of geological, cultural, geomorphologic and archaeological heritage. To that end, it lays down measures for the prevention and control of avoidable serious soil degradation, caused by a wide range of human activities, with due account also being taken of natural causes, which undermine the capacity of a soil to perform those functions. It lays down measures that improve the soil characteristics and functions, where appropriate.

Scope: the Directive shall apply to soil forming the top layer of the earth's crust, including the liquid and gaseous components, provided that it performs the functions referred to above. It will not apply to areas of land in respect of which, prior to [date of entry into force of the Directive], by agreement with the competent authorities, remediation decisions have been taken or remediation has already been completed, so that the areas of land in question pose no significant danger to human health or the environment.

Definitions: Parliament amended some definitions, such as "dangerous substances" and inserted new ones, including 'acidification', 'compaction', 'valuable soils', 'priority areas which would need special protection', 'contaminated site', 'remediation', and 'loss of organic substance'.

National or regional inventories: Member States must establish national or regional inventories of contaminated sites. The inventory will be made public and updated at least every seven years on the basis of information delivered to them or generated on their behalf, in particular to include new contaminated sites that have been identified and to exclude sites which have undergone remediation and no longer pose a significant risk to human health or the environment. Member States will, where appropriate, give special attention to the distinction between anthropogenic pollution and geogenic contamination. Geogenically contaminated soils will be evaluated in terms of their risks to human health and the environment. They must designate one or more competent authorities to be responsible for the identification of both potentially contaminated sites and contaminated sites and for the management of the related inventory. Within six years from transposition date, they must have identified the location of at least the sites where certain soil affecting activities are taking place or have taken place in the past, such as Seveso and mining installations or landfills of waste. These activities are described in the text. Where a site is to be sold and where changes in the land use of a site occur on which an activity referred to in the text is taking place or has taken place, the owner or the prospective buyer must fulfil certain obligations. The investigation and assessment necessary to decide whether a site is a risk to human health or the environment should always be completed before construction of any new development begins.

Remediation strategies: Member States must, within seven years from [transposition date], ensure that a remediation strategy or strategies are drawn up and made public at the administrative level they consider appropriate, including at least general remediation targets, a prioritisation, a timetable for implementation of remediation measures for the contaminated sites and the funding mechanism.

Member States will notify the Commission of the remediation strategy or strategies. If the means required for remediation are not technically available, or represent 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 the environment or human health, including by restricting access to them or allowing natural recovery. If Member States choose either of these options, they shall monitor the risk to human health and the environment.

Priority areas: within two years from transposition date the Commission shall, in accordance with the regulatory procedure with scrutiny, produce guidelines, based on best practice, for the definition and identification of priority areas. Within five years from transposition date, Member States shall identify the priority areas, which in their estimation require special protection against one or more of a prescribed list of soil degradation processes. This list includes subsidence, soil biodiversity loss, desertification, acidification and adverse effects of climate change on the soil. In identifying the areas, Member States shall take into account the effects of those soil degradation processes in exacerbating greenhouse gas emissions and desertification, the loss of human life and well-being and the damage to cultural heritage. Member States shall take into account present land use practices which aim already at combating these degradation processes. For the purposes of preserving soil functions, Member States shall, in respect of the priority areas identified in accordance with the Directive, ensure that, at what they deem the most appropriate geographical and administrative level, risk reduction targets are formulated to combat the degradation processes and that the necessary measures are taken, including integrated territorial care strategies or programmes of measures, and where possible restoration targets, where there are legitimate grounds for suspicion that one or more of the soil degradation processes has occurred or is likely to occur in the near future, 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. However, Member States which already have specific national legislation in place to protect their soils shall be exempted from this, on the condition that their legislation secures at least an equivalent level of protection.

Agricultural use of soil: each Member State, in accordance with its climate, soil characteristics and agriculture, as well as its best agricultural practices, may decide upon its own agricultural policy in relation to the soil. No later than two years after the entry into force of this Directive, the Commission shall present a proposal for a biowaste directive setting quality standards for the use of biowaste as a soil improver. In addition, the Commission must promote the use of certain products that contribute most to maintaining and increasing the organic material of soils and to the prevention of desertification. Member States shall also promote the use of green fertilisers and compost that enhance the fertility and biological activity of soil.

Within five years from transposition date, Member States must develop voluntary codes of good practice as regards soil protection for those activities which may reasonably be expected to hamper significantly the soil functions referred to in the text. These codes of good practice may build on existing national or Community codes and may contain the elements provided for in Annex -I.

Within three years from transposition date, the Commission shall facilitate the distribution and exchange of information on the legislation or codes of good practice already existing in the Member States as regards the protection of soil functions, including the cultural heritage, natural parks and geologically valuable zones.

Soil sealing: Member States will also have to take measures to limit soil sealing and minimise its effects to the extent which is necessary, in particular where a proposed development project involves soil sealing, and where a list of other conditions is applicable.

Cooperation between Member States: where a Member State is aware that any of its priority areas or contaminated sites are likely to have significant negative effects on human health or the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the priority areas or the contaminated sites are located shall inform the other Member State and consult it on the measures to be taken to prevent or reduce such negative effects.

Lastly, it should be pointed out that the Annex has been substantially amended.

Environment: strategy for the protection and sustainable use of soil

In spite of various attempts by the Presidency to present compromise proposals in order to meet delegations' concerns, it was not possible, at this stage, to attain the qualified majority needed to reach political agreement on a draft directive establishing a framework for the protection of soil.

The German, French, Dutch, Austrian and UK delegations could not accept the text tabled.

Environment: strategy for the protection and sustainable use of soil

The Presidency briefed the Council on progress concerning the draft Directive establishing a framework for the protection of soil, as set out in its report.

While the European Parliament delivered its opinion in first reading in November 2007, the Council has not yet reached political agreement on this dossier. Several delegations regretted this fact and expressed the need for a Community instrument, whereas others reiterated their opposition to such common measures as well as their concerns in relation to administrative burden and cost-effectiveness.

The following contains an outline of the major outstanding issues addressed in the latest Presidency text by means of a number of compromise proposals.

Scope and definitions; current/ approved future use of degraded soils: a number of delegations are of the opinion that, in some cases, re-establishing the appropriate level of functionality of a soil can be achieved through changing the land use. Other delegations, and the Commission, are concerned that such a provision could be misused by the owner of a contaminated site to circumvent remediation.

Integration (Article 3): a majority of delegations are of the opinion that integrating soil protection aspects into policies which may significantly exacerbate soil degradation processes as set out in this Article would be essential for a successful soil protection strategy. However, a number of delegations remain concerned about the scope of Article 3 and the potential difficulty of transposing and implementing it. They are also apprehensive about possible overlap with other pieces of Community legislation, notably the Directive on the assessment of the effects of certain plans and programmes on the environment. Identification of priority areas: some Member States would prefer to manage possible soil degradation processes without having to define specific areas, and wish to ensure that the assessment would not be required to go down to the individual plot level. They are furthermore doubtful that establishing relevant levels of risk acceptability, including in numerical terms, would be practicable. Finally, there is a concern that some degradation processes may occur across the whole of a Member State's territory in a patchy way, making it impracticable to define specific areas.

Identification and inventory of contaminated sites: this Article, dealing with soil contamination, covers some of the most intensively debated provisions of the Directive. Several delegations have expressed concerns regarding the identification procedure for contaminated sites, finding it too cumbersome and costly, as well as the timeline for the finalisation of the inventory of contaminated sites. The Article now contains a much streamlined identification procedure, leaving significant flexibility to Member States. A number of other delegations and the Commission, however, oppose the degree of flexibility as provided for in the text and prefer greater harmonisation in order to achieve a level playing field across the EU.

Soil status report: some delegations remain concerned about cost implications for economic actors, with potential negative impacts on economic development and in particular the housing market.

In the current Presidency text, requirements concerning the establishment, content and use of soil status reports have been relaxed and leave more flexibility to Member States in order to respond to these concerns.

Implementation and adaptation to technical progress: this Article on comitology poses problems for some delegations which would prefer a platform for the exchange of information and best practices, without further provisions that could in their view lead to harmonised risk assessment methodologies in some degree.

Environment: strategy for the protection and sustainable use of soil

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Whilst Parliament delivered its opinion at first reading in November 2007; the Council has not yet reached political agreement on this dossier. Several delegations regretted this fact and expressed the need for an EU-level instrument so as to fill a gap in EU environmental legislation and put soil on par with water or air in terms of protection. Others reiterated their opposition to the proposal as well as their concerns in relation to subsidiarity, the administrative burden and cost-effectiveness. A number of ministers called for a fresh approach in order to take discussions at European level on soil protection forward.

To date, soil has not been subject to a specific protection policy at EU level. The draft directive would establish a common strategy for the protection of soil, based on the principles of:

- integration of soil concerns into other sectoral policies;
- prevention of threats to soil and mitigation of their effects;
- preservation of soil functions through the identification of priority areas and establishment of actions programmes;
- identification and remediation of contaminated sites;
- awareness raising, reporting and exchange of information.

Environment: strategy for the protection and sustainable use of soil

As announced in Official Journal C 153 of 21 May 2014, the Commission decided to withdraw this proposal, which had become obsolete.