



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

**DIRECTIVE PROPOSAL ESTABLISHING
A FRAMEWORK FOR
THE PROTECTION OF SOIL
COM (2006) 232**

CEMR POSITION

Brussels, 18 April 2007

GENERAL REMARKS

Territorial and local dimension

1. Soil policies have a strong local and territorial dimension. CEMR stresses that there is a strong commitment of local and regional authorities to improve and protect the quality of soil.
2. Although a global approach is needed - going from the entire planet to the smallest parcel of land- to tackle the issue of soil, soil is, much more so than air and water which are mobile elements, tied down to its local area. Various physical conditions apply that are connected with, among other aspects, geology, morphology and climate, but are also associated with the use of the land both historically and through present land use. Local and regional authorities are therefore particularly concerned with soil management.
3. Soil differs greatly from one region to the next and thus has a considerable influence on the local situation. Soil is a vital issue, which has not yet fully captured the public interest.

THEMATIC STRATEGY AND FRAMEWORK DIRECTIVE

4. CEMR supports the objectives of the Strategy i.e. to establish common principles, to prevent soil threats, to preserve soil functions and to ensure sustainable use of soil. However, local and regional authorities already have a considerable amount of EU-derived environmental legislation to implement (waste, air, water etc.) – of which much contributes to soil policy.
5. CEMR therefore urges for some caution about additional requirements in the future, such as potential quantitative targets on soil. National policy experiences have shown that setting and implementing quantitative targets on soil is already very difficult at the national level; such implementation would be even more difficult at the EU level, given the huge variety of the different local soil conditions
6. Subsidiarity, flexibility and proportionality need to be ensured in any development of a common European soil policy. Furthermore, the EU legislation should take into account the important variations among Member States in their capacity for doing this work. CEMR welcomes the choice of a framework directive as an instrument.

GOVERNANCE AND SUBSIDIARITY

7. In some Member States, such as Sweden, it is the municipalities that are responsible for land protection, both within the framework of municipal self-government as well as through their official role within the

planning and environmental areas. It is thus extremely important that national action plans and action programmes for a sustainable form of land protection be implemented in close collaboration with the local and regional levels. The national level should provide the main regulatory and financial framework. The EU level may provide some framework to regulate issues that are clearly related to cross-border issues, should provide financial incentives to de-pollute heavily contaminated sites, should promote research and the exchange of information and best practice and pool knowledge.

8. In other countries, such as France, local and regional authorities do not have direct competence on soil policy (for instance, the identification and mapping of soil areas is performed by the national government). Nevertheless, in these Member States, the local and regional levels are responsible for policies that can have a great influence on soil management and quality (land use and planning, urban sprawl, soil sealing, transport, water management etc.).
9. The subsidiarity principle requires that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at Community level is justified in the light of the possibilities available at national, regional or local level. Specifically, it also means that the EU does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. The very local character of soil issues, and the existence of national, regional and local soil policies make this principle particularly relevant to soil issues.
10. CEMR emphasizes that, in accordance with the principle of subsidiarity, EU policies and rules should be flexible enough to enable local and regional authorities to take into account specific local physical conditions and priorities when developing and implementing a soil policy.
11. CEMR would like to insist that the EU framework directive must take into account and respect the **policies and plans already in force at the national, local and regional levels** within the Member States.

INTEGRATED APPROACH

12. CEMR strongly recommends to make use and improve the enforcement of **existing EU legislation** that can contribute to the aims of a common soil policy and to **integrate** soil protection concerns in related policies. This includes in the first place agriculture, waste, water, transport, product and air policies.
13. A greater synergy is particularly needed between soil and waste policies. CEMR would welcome a revision of the sewage sludge directive that would increase the quality standards of sludge and better define when sludge can be applied to soil – and to what types of soil.

14. Also, the role of biowaste as a source for addressing the deficiencies in soil organic matter is a major opportunity. The parallel discussions on the Thematic Strategy on Waste Prevention and Recycling and on the Thematic Strategy on Soil protection, and their respective directives, offer important possibilities to enhance, in EU policies, the role of biowaste towards soil protection. CEMR believes no EU-level obligation on separated collection of biowaste is needed; nevertheless the EU should set common product quality standards on compost. Such norms will drive the market forward for good quality compost.
15. CEMR would like to stress that the EU soil strategy, and in particular the directive, should address the impacts of climate change on soil to a larger extent. Preventive actions against the negative impacts on soil (desertification, forest fires, flood etc.) must be developed. In areas identified as already suffering from the change in climate, the implementation of adaptation measures should be encouraged.

FINANCING

16. Soil protection, and in particular the cleaning up of contaminated sites, is expensive. EU legislation many times imposes requirements to the local and regional levels without making any specifications about the financing of the measures – leaving it down to national governments to decide. However, financing is key for the implementation of an effective soil protection. Local and regional authorities should not be expected to bear these costs alone. EU soil policy should be based on the **polluter pays principle** which is laid down in the Treaty on the European Community¹: this involves the private sector in the first place. CEMR also pre-supposes that, since the directive addresses Member States, national governments as well are expected to finance the implementation of the provisions proposed in the draft directive. CEMR would like the directive to be more explicit on this point.
17. Indeed, in many Member States with a soil policy, the private sector and national governments foot most of the bill of decontamination costs. This should continue to be the case, and this model should be encouraged in Member States where it is not case or without soil policy. In the United Kingdom, for instance, much remediation work is funded by developers who wish to build on contaminated sites; they must bear the cost as part of their investment in the site and as a condition of receiving planning permission. Where the polluter cannot be identified or cannot be held liable the burden falls to local authorities; but they can then apply to the central government for a grant to cover

¹ Article 174 (2) “Community policy on the environment (...) shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”

the cost of remediation works. CEMR believes that the EU framework should promote similar provisions.

18. In the United Kingdom, the 2005 Environment Agency report *Indicators for Land Contamination* estimated that 300,000ha of land previously used for industrial purposes may be contaminated. Using the per-hectare cost from a methodology developed by British Gas, this would result in a potential remediation cost of £144billion (300,000ha x £483,000 per ha)².

The UK pursues a policy of concentrating the development of new housing on brownfield sites. The British Association of Geotechnical & Geo-environmental Specialists (AGS) makes estimates that the total remediation cost of the new housing sites would cost £2.1billion until 2016, or £140million a year³.

19. In Austria, the so called "Altlasten atlas" is an inventory of the most contaminated sites (potentially dangerous sites such as old landfills or industrial sites). This inventory comprises approximately 240 sites. Only contaminated areas fulfilling specific conditions, classified as "Altlasten" are open to public co-financing of decontamination measures. Since 1989 49 Austrian municipalities have decontaminated 51 sites, with total costs of approximately 397 million euros. **Most of the costs (328 Mio. €) were borne by a special federal fund**, 4 Mio. € were financed by regional governments and the rest by the concerned municipalities. This means that municipalities paid the remaining part of the bill, i.e. 65 Mio. € or an average of 80.000 € per year per municipality.

20. CEMR would like to invite the EU to explore the possibility of setting up a specific European insurance funds for soil decontamination, which could be financed by EU solidarity funds, in order to help poorer regions face the important decontamination costs of former heavy industry sites (see also point 29).

21. CEMR would like to recall that under directive 2004/35/CE on Environmental Liability (to be transposed into national law from the 30th of April 2007), operators, on the basis of the polluter pays principle, are clearly responsible for the prevention and remediation costs of land contamination directly caused by their activities. Furthermore, article 14 on *Financial security* requires Member States to take measures to encourage the development of financial security instruments and markets, including financial mechanisms in case of insolvency, with the aim of "enabling operators to use financial guarantees to cover their responsibilities".

² more evidence of decontamination costs can be found in the Annex

³ see details in Annex

CEMR would also like to make the following comments concerning more specific points from the draft directive.

SPECIFIC POINTS

22. Article 3 “Integration”

CEMR welcomes the emphasis on the necessary integration of soil protection in related policies. However, this article should not address just the Member States, but also the EU level. Most of the environment and agriculture legislation derives from the European Union; the EU also has some impact on the transport sector, notably through funding of infrastructures and the structural funds. The European Commission is also increasingly developing actions concerning climate change, both on the mitigation and the adaptation aspects – the latter one having a clear relation to soil. Therefore it is essential that soil protection criteria are integrated into EU policies as well.

23. Article 4 “Precautionary measures”

CEMR would like to get clarification as whether this affects land use authorisations and on the extent and nature of the measures to be taken.

24. Article 5 “Sealing”

CEMR agrees that the issue of soil sealing needs to be tackled. Sealing hampers the natural and vital functions of soil and favours water run offs and flooding. In a context of warming climate, it also contributes to increasing the summer temperatures in built-up areas. Excessive soil sealing is also clearly detrimental to the natural environment and to biodiversity.

Nevertheless, there should be caution about imposing absolute targets to limit soil sealing. This can have important impacts on construction, economic activity, land use and planning. Limiting soil sealing must be done in a flexible, case by case basis, and should not be imposed uniformly. It is a prerequisite that local and regional authorities, as land planners and land users, are formally involved in the formulation of measures national governments may take in order to limit soil sealing. Local and regional authorities will not be able to comply with article 5 as long as common knowledge, guidelines and the exchange of best practices is not improved.

Therefore CEMR would like to ask the European Commission to promote research on construction products and techniques that mitigate the negative effects of soil sealing on the natural functions of soil and to produce guidelines on such precautions and techniques.

We also believe soil sealing is an issue on which awareness and dissemination of knowledge and good practice needs to be increased. CEMR therefore welcomes the announcement in the Thematic Strategy of the initiation by the European Commission, in 2007, of activities

to develop best practise on the mitigation of the negative effects of sealing on soil functions.

25. Article 6 “Identification of risk areas”

Due to the different soil conditions in the various Member States it is not possible to have common uniform standards on the definition of risk areas. However, the European Commission should provide guidelines based on best practice in order to help national, regional and local authorities defining and identifying risk areas. The use of such guidelines will also make easier the comparison of the risk areas throughout the European Union.

26. Article 8 “Programmes of measures”

CEMR would like to ensure that local and regional authorities are closely consulted about these measures and the time it takes to implement the programmes; a specific provision should be inserted in this article.

27. Article 10 “Inventory of contaminated sites”

CEMR believes this article should be changed in order to take into account national pollution control mechanisms that already identify potentially contaminated sites through the authorisation and control system. In Germany, for instance, any business that wants to start an activity which may entail potential pollution to the soil needs a specific permission from the federal government or the *lander's* authority. Then the activity will be regularly controlled by the authorities. This means that all the sensitive activities and sites are already clearly identified through this mechanism: there is no need to perform a separate inventory.

CEMR demands that the inventory requirement takes into account the identification already performed in the different Member States and does not lead to double work and unnecessary administrative tasks. Furthermore, CEMR proposes that inventories are updated, and not reviewed, every five years (i.e. modification is inserted where there have been changes, there is no need to perform a complete review every five years).

28. Article 11 “Identification procedure”

CEMR would like to insist, in respect of the polluter pays principle, that the polluter should bear the costs of the pollution measurement and of the on-site risk assessment. If it is not possible to identify the party responsible for the contamination, the national government, or a national funding mechanism, should bear most of the costs.

29. Articles 13 and 14 “Remediation”

The cleaning up of contaminated sites is important for reasons of environmental protection, public health, land value and attractiveness of the concerned area.

Some European regions, or specific sites, that used (or continue) to host highly polluting heavy industry suffer from important soil contami-

nation. Such areas -provided that the polluting activities have ceased- should constitute priorities of the remediation strategies and, if the polluter cannot be identified or cannot pay and there is no one else to be held responsible, benefit from EU funding for the cleaning up operations.

CEMR would like to stress the very important **costs** decontamination operations represent. The cleaning up of dirty areas such as an old dumping site can cost a small local authority up to four times its annual budget. Many times, local authorities cannot afford such operations. They can represent a heavy budget burden to regional authorities as well. The directive clearly addresses the Member States but it should be made explicit that, when the polluter cannot be identified or cannot pay, the national governments will bear the costs of decontamination, directly or through the setting up of a national funding mechanism that can be financed by the central or federal government as well as by polluting industries.

As part of the **polluter pays principle** which is in the Treaty on the European Community, CEMR believes the private sector, when responsible for contaminating soil, should be made to pay for the cleaning up. CEMR welcomes the amendment to the IPPC (Integrated Pollution Prevention and Control) directive, announced in the Thematic Strategy, so that the issue of soil quality during industrial activity and after cessation is addressed.

Generally, CEMR believes the authorities and funds responsible for the remediation strategy should be better defined.

30. Article 16 “Reporting”

Local and regional authorities are already involved in a considerable amount of reporting obligations derived from EU environmental legislation. CEMR would like the reporting obligations proposed in the draft directive to be lightened and made less systematic. CEMR proposes to suppress the general reporting obligation and to replace it by a possibility and a right for the European Commission to access data and national policy information from Member States on request.

31. Article 17 “Exchange of information”

CEMR welcomes the establishment by the European Commission of a platform to exchange information on the risk area identification and on risk assessment methodologies. Local and regional authorities should be invited to participate in this platform on a voluntary basis. Moreover, the mandate of the platform should be enlarged to the exchange of good practice on the prevention of soil contamination, on soil decontamination and on measures and techniques that mitigate the negative effects of soil sealing on the natural functions of soil.

CEMR calls on the Commission to produce guidelines on these issues, in particular aimed to the local and regional levels.

32. CEMR believes that the EU strategy needs to focus on awareness-raising, cooperation and dissemination of soil knowledge, taking into account the considerable spatial differences in soil type, soil use and the socio-cultural aspects of soil. Soil sealing is an issue on which awareness and dissemination of knowledge particularly need to be increased. As such we welcome articles 15 (1) and 17 but we would like them to be strengthened.



SOME FIGURES OF SOIL DECONTAMINATION COSTS TO LOCAL AND REGIONAL AUTHORITIES and SOME NATIONAL LEGAL PROVISIONS in some countries

United Kingdom

New housing developments

Data provided by the AGS (Association of Geotechnical & Geo-environmental Specialists) refers to costs that would be incurred by developers/builders (see point 17 about UK legal provisions concerning new housing developments). It assumes that:

- 3.5million new homes are needed in the UK between 2001-2016 (estimated by the central government)
- 60% of these new homes will be built on brownfield sites (in line with government targets)
- the remedial cost is estimated to be approximately £1,000 per dwelling

This results in a total remediation cost of £2.1billion, or £140million a year. Estimates of the area of land in England and Wales that may be contaminated vary, but the 2005 Environment Agency report *Indicators for Land Contamination* estimated that 300,000ha of land previously used for industrial purposes may be contaminated. This estimate should be treated with caution but, using the per-hectare cost indicated by British Gas, this would result in a potential remediation cost of £144billion (300,000ha x £483,000 per ha).

Cost of soil contamination assessment to local authorities (England)

Since 2000, every local authority in England (353) must carry an inspection strategy (and then continue to inspect regularly after the first one) to identify and assess potential contaminated sites and, where necessary, pursue a course of action to secure suitable remediation. LACORS (Local Authorities Coordinators of Regulatory Services) has evaluated (rough estimate), on the assumption of 353 officers x £50,000 per annum (average salary cost), the total cost to local authorities to be £17.65 million a year.

France

The soil database of the Environment Ministry, BASOL⁴, has officially identified 3819 heavily contaminated former industrial sites in France. However, according to the *Bureau de recherches géologiques et minières*, up to 300 000 former and existing industrial sites have potentially polluted the soil, to a small or a large extent. Some of these sites are located in urban centres.

The current national legal framework is based on the polluter pays principle. Nevertheless, if the polluter cannot be identified or does not exist anymore, the de-pollution bill goes to the local authority.

⁴ <http://basol.environnement.gouv.fr/>

The municipality of Grand-Quevilly (Normandy) bought land that used to be owned first by a metal factory and then by a chemical one (production of ammonia). Municipal works on the land revealed that the soil was heavily contaminated with fossil fuels and heavy metals and that it therefore requested decontamination. The cleaning up cost 2,74 million euros, of which most of it was borne by the local authority (part of it was financed by the Regional Water Agency, a public body, and by the European Regional Development Fund).

Norway

The law on pollution control is amongst the strongest in Europe. In principle there is no limit regards to how much the polluter might have to pay to clean up a site (based on the polluter pays principle). However the law also states that the costs should be reasonable. This means that a municipality that has a contaminated site on its territory which will cost a very high cost to clean up will not be asked to pay all the costs, since this might become unreasonable for the municipality. Nevertheless there are examples of municipalities that have paid several million euros to clean a site.

The Norwegian law differs from many other European countries in other ways, too. There is no limitation in the law regards to when the pollution took place. This means that a company which did contaminate a site 40 or 50 years ago (and if they still exist as a company) can be requested by the pollution control authorities (SFT) to clean up today. They have to pay all or part of the costs depending on the actual case. If a company does not exist anymore the owner of the contaminated ground in principle might have to do the cleaning up and have to pay the costs for doing it.

A full mapping of contaminated sites was finalised in 2005. A database with all contaminated sites in all municipalities in Norway can be found on :
<http://www.sft.no/Grunn/>

Examples of costs of decontamination operations finalised in 2005

In cases where the municipality owns contaminated ground from old industrial sites, the municipality and the Government (represented at County level) negotiate on how to share the cost of the cleaning up of such sites for which no specific polluter can be identified as liable. In such cases the municipality covers a part of the costs of the clean up. In other cases (old landfills) it is more common that most of the cost falls onto the municipality.

The table below shows three severely contaminated sites in Norway where municipalities have had to cover all (Kristiansand) or most (Arendal and Bergen) of the costs. These three cases are the most expensive ones for municipalities in recent time in the country.

Severely contaminated grounds (A-cases) in Norway where expensive clean up was finalised in 2005:

Municipality	Type of site	Pollution	Costs in €(million)	Todays use of the area
Arendal (Eydehamn,)	Aluminium industry	PAH	4,10	Harbour, business area
Kristiansand (Kongsgårdbukta)	Old landfill	PCB, PAH, HCB	3,50	Harbour, business area
Bergen (Kollevåg 1)	Old landfill	PCB, PAH, Heavy metals	2,35	Bathing place, harbour, recreation area