

# EU Policy Review

Analysis of recent EU legislation and policy for local and regional government

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## LEGISLATION

### New Directive on Soil Protection and Remediation of Contaminated Land

#### Introduction

The European Commission has proposed a new Directive as part of an EU Soil Strategy to ensure that Europe's soils remain healthy. Soil can be considered a non-renewable resource, as it takes hundreds of years to produce a few centimetres of soil. Yet soil degradation is accelerating across the EU. Some threats are naturally occurring such as erosion by water or wind. Other soil problems are linked to industrial sites, mining, illegal or poorly managed landfills, sewage sludge, and certain agricultural practices. Some problems are linked to the sealing of soil for housing, roads and other infrastructural purposes, and the effects of floods and landslides. Soil degradation has a strong impact on other areas such as water, human health, climate change, nature and biodiversity protection, and food safety.

The Commission proposes to establish a common approach across the EU through a new Directive, but to leave national governments flexibility to implement this approach in a way which fits local situations best. Public authorities in EU countries will be required to undertake activities to tackle threats such as landslides, contamination, soil erosion, and sealing of soil wherever they occur, or threaten to occur. An inventory of contaminated sites will have to be drawn up, and remediation measures put in place, entailing significant costs for those responsible – some of these costs are estimated by the Commission in documentation accompanying the proposal.

Only nine EU countries have specific legislation on soil protection, often covering a specific threat, such as contamination of land or desertification. The Commission published a consultation paper on a possible Directive on soil protection in 2002 (see *Local Authority Bulletin on Europe* for April – May 2002), and on the basis of submissions received, has prepared the current proposal.

The proposed Directive, if adopted, would require measures to be undertaken to prevent and remediate soil degradation and contamination. However, it will be up to national governments to determine specific targets, given that the extent and nature of soil degradation varies considerably throughout Europe.

#### *Risk Assessment, and Targets for Improvement*

Within each EU country, areas and localities will have to be identified where there is a risk of:

- Soil erosion, organic matter decline;
- Compaction (caused by excessive stocking rates and use of heavy machinery in agriculture);
- Salinisation (often caused by irrigation and artificial fertilisers) and;
- Landslides.

For example, landslides tend to occur more frequently in areas with highly erodible soils, clayey sub-soil, steep slopes, intense and abundant precipitation, and land abandonment. Identifying these areas, and putting in place a programme of preventative measures is critical according to the Commission, as landslides can cause damage totalling up to €1.2 billion per event (including damage to property and infrastructure, disruption for businesses, loss of fertile soil, contamination of soil due to damage to pipelines, and potential contamination of surface waters).

Risk areas would have to be identified within 5 years of the Directive becoming national law. The risk areas would be made public and reviewed every 10 years. The Commission expects the cost of identifying areas at risk would be less than €2 million per year across the EU as a whole.

The level of risk acceptability will be a matter for national governments, and these will vary according to local conditions and other considerations. However, risk reduction targets for those areas identified will have to be set, and a programme of measures published to achieve these targets will have to be drawn up within 7 years of the Directive becoming national law. After that, the programme of measures must be revised every 5 years.

The measures could build upon arrangements already in place to check compliance with EU environmental rules on agricultural land as a condition for receipt of the single farm payment, codes of good agricultural practice, arrangements under the Nitrates Directive, flood risk management plans, or future measures under river basin management plans for the Water Framework Directive.

#### *Identifying Contaminated Sites and Remediation*

As a result of over two hundred years of industrialisation and the 'sins of previous generations', Europe has inherited a problem of soil contamination due to the use and presence of dangerous substances in many production processes, and poor or inadequate management practices.

The Directive provides that measures will also have to be undertaken to prevent contamination. A national inventory of contaminated sites across the country will have to be drawn up – and a competent authority or authorities will have to be designated in each country to carry out this work.

Contaminated sites and potentially contaminated sites would be identified on the basis of a common list of potentially polluting activities, which would include:

- ❑ Landfills and waste management facilities;
- ❑ Waste water treatment plants;
- ❑ Mines;
- ❑ Petrol and filling stations;
- ❑ Former military sites;
- ❑ Ports and airports;
- ❑ Dry cleaners;
- ❑ Other facilities using dangerous substances; and
- ❑ Industrial and agricultural activities requiring an IPPC licence.

Compiling the inventory of contaminated sites will involve a series of steps for each site, including a preliminary survey and subsequent site investigations to determine whether sites are contaminated or not. The different steps involved could include:

- ❑ Preliminary Survey – to assess whether potentially polluting activities have taken place, and whether contamination can be expected. As a result, a site will in most cases be classified as potentially (suspected to be) contaminated or not contaminated;
- ❑ Preliminary Site Investigation – to confirm the existence of contamination, with results depending on sampling patterns, depth of boreholes, selection of substances to be analysed, etc;
- ❑ Main Site Investigation – to determine the need for remediation or other measures to eliminate or reduce exposure to the contaminants, define the extent of the contaminated area and degree of contamination, and the risks involved;
- ❑ Undertaking Remediation Activities and Measures.

Under the proposal, a preliminary inventory will have to be completed and published within 5 years of the Directive becoming national law, and the inventory must be reviewed every 5 years.

The on site risk assessment must take place:

- ❑ For at least 10% of the sites within 5 years of the Directive becoming national law;
- ❑ For at least 60% of the sites within 15 years; and
- ❑ For the remaining sites within 25 years.

National government will also have to draw up a national remediation strategy to manage contaminated sites over the medium to long term. The draft Directive states that remediation shall involve “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.”

The national remediation strategy will prioritise the sites to be remediated, and provide a mechanism for funding 'orphan sites'. Where possible of course, financing of remediation works should be carried out in line with the polluter pays principle. Importantly for local authorities however, in cases of 'orphan sites' where the polluter cannot be identified or held liable, the draft Directive states that national governments must establish a funding mechanism for the remediation of these sites.

The national remediation strategy must be in place within 8 years of the Directive becoming national law, and be reviewed every 5 years.

The Commission estimates that the costs for the first five-year stage to establish an inventory of contaminated sites (based on a preliminary survey as the first step in the inventory process) would be about €51 million per year for the whole of the EU.

As noted above, following this first stage, there would be a series of on-site investigations to check on whether there is a serious risk to human health or the environment. The cost per site for each preliminary site investigation has been put at between €1,300 and €4,900, while the cost per site for each main site investigation has been put by the Commission at between €5,200 and €19,600.

The number of potentially contaminated sites, let alone contaminated sites, is not known for sure, so the Commission undertook an illustrative costing on the basis of estimates and scenarios. This gave a rough estimate for around 2,400 for the number of potentially contaminated sites in Ireland, with perhaps some 200 contaminated sites in Ireland. The Commission concludes that the on-site investigations might cost *up to* an annual amount of €240 million across the EU during the full 25 year period provided for completing the inventory.

Obviously, because the precise measures to combat the problems and remediate contaminated sites would be determined by national governments, the overall economic costs of these could not be calculated by the Commission as they will depend on the level of ambition. However, it estimates that the total soil and groundwater remediation of each contaminated site could cost:

- ❑ Between €85,000 and €160,000 in the case of small scale sites (representing an estimated 86% of total sites);
- ❑ Between €400,000 and €500,000 in the case of large scale sites (representing the remaining 14% of total sites).

In addition to these figures, a feasibility study and remediation investigation, costing between €19,500 and €73,500, must be added for each site.

When land is being sold where a potentially contaminating activity has taken or is taking place, a soil status report will have to be provided by the seller or the buyer to the relevant administration and the other party in the transaction.

#### *Sealing of Land through Development*

Sealing involves the covering of land for housing, roads, or other infrastructure. The area of soil surface covered with an impermeable material represents around 9% of the total area across the EU, and the sealed area has increased steadily over the last number of years due to demands arising from urban sprawl for new construction and transport infrastructures. The Commission has argued that while soil sealing is largely determined by spatial planning decisions, the effects of irreplaceable soil losses are often not sufficiently taken into account in the planning process. These include increased flood risks, reduced groundwater recharge, and increases in water pollution.

The Directive will require public bodies to limit or mitigate the effects of sealing, for instance by rehabilitating brownfield sites. The Commission plans to disseminate best practice in limiting the negative effects of sealing, by using construction techniques that maintain as many soil functions as possible.

The proposal also involves amending the IPPC Directive (96/61/EC) to strengthen its soil protection and contamination prevention provisions through the IPPC licensing process.

National governments must through national legislation provide for effective and dissuasive penalties to prevent infringements of the provisions of the Directive.

The text of the EU Soil Strategy, and the accompanying draft Directive, is available at:

<http://ec.europa.eu/environment/soil/index.htm>

## POLICY INITIATIVES AND ANNOUNCEMENTS

### **Ireland Slips Down League in E-Government Survey**

The latest survey of online government services by the European Commission demonstrates that public service providers in Ireland, including local authorities, continue to perform well in many key areas. However, other countries are rapidly catching up and many have overtaken Ireland in terms of the level of sophistication of online services and interaction.

The e-government benchmarking survey is part of the e-Europe initiative, which amongst other things is designed to develop online public services and encourage greater Internet availability and accessibility for electronic services. The current survey examined 14,000 public service

websites in all 25 EU countries as well as Norway, Switzerland and Iceland.

In order to measure progress, benchmarking indicators are employed. In terms of E-government, the services examined cover a range of areas such as car registration, custom declaration, corporate tax, public procurement, planning permissions, environment-related permits, library services, and driving licence applications.

Overall, the results demonstrated that measurements of online sophistication showed that Ireland was ranked above the EU average at 11<sup>th</sup> out of 28 countries. However, it has dropped from the 4<sup>th</sup> place it held in the last such survey two years ago. Austria leads the way, with Malta jumping from 16<sup>th</sup> to 2<sup>nd</sup> place, and Estonia jumping from 8<sup>th</sup> to equal 3<sup>rd</sup>, along with Sweden. The report notes that the Irish government is currently preparing a new Action Plan on the Information Society, the central focus of which will be the citizen. This plan is expected to include new initiatives regarding 'joined up' government services, and will address cultural and organisational issues as well as improved records management.

With respect to individual local government services, Ireland's performance was also above the EU average. For example, Ireland featured as better than average in terms of online driving licence applications, and amongst the top performers in terms of environment-related permits, while Ireland ranked mid-table with regard to applications for building permission and online public procurement. Public library search facilities were high for most EU members and Ireland scored relatively well here also.

The full report is available at:

[http://europa.eu.int/information\\_society/eeurope/i2010/index\\_en.htm](http://europa.eu.int/information_society/eeurope/i2010/index_en.htm)

### **Environment Ministers Give OK to Urban Strategy**

National environment ministers meeting over the summer welcomed the Commission's Thematic Strategy on the Urban Environment, and called for activities to start quickly (see *EU Policy Review* 1/06 for December 2005 – January 2006). They placed a particularly emphasis on the EU's role in assisting national and local activities to improve the environmental situation of cities and urban areas through guidance, exchange of experience, and where appropriate, financial support.

Ministers invited the Commission to provide an impetus for greater public participation, in particular by actively facilitating and promoting Local Agenda 21. The Commission also plans to publish technical guidance in 2006 on integrated environmental management, including environmental objectives, measures and instruments, and by highlighting examples of good practice.

There was also a recognition by the ministers that the relationship between cities and their hinterland is crucial to tackling environmental problems, as urban sprawl and commuter belts expands. Ministers recommended an interregional and intersectoral approach to coordinate transport, urban and regional planning policies, involving cities and hinterland authorities.

National focal points on urban environment issues should be established, and a core set of urban environment data and indicators are to be published to assist in monitoring and comparing progress across different European cities.

## Survey of Implementation of Environmental Directives Paints a Bad Picture for Ireland

The European Commission's most recent annual survey of the implementation of EU environmental Directives shows continued difficulties in implementing and enforcing EU laws in Ireland, and reports on environmental infringement proceedings initiated by the Commission against various countries.

The *Seventh Annual Survey on the Implementation and Enforcement of EU Environmental Law* illustrates that countries are often late in adopting national legislation to give effect to EU environmental Directives. By end-December 2005 there were 124 cases across the EU in which environmental Directives were not transposed into national law on time, 86 cases in which the Directives were not correctly transposed, and in 279 cases obligations under the Directives (such as adopting plans or providing data) were not met. Compliance varies but Italy, Spain, Ireland, France, Greece, and Portugal have the worst records. Most shortcomings are in the areas of waste, nature protection, water, and environmental impact assessment. The report also notes the frequency of complaints and concerns addressed directly to the Commission by citizens and groups.

The report notes difficulties in implementing EU environmental legislation in Ireland is areas ranging from the Nitrates Directive (91/676/EEC), to the April 2005 European Court judgement against Ireland over failure to implement different provisions of the Waste Framework Directive (75/442/EEC) in different parts of the country. Many complaints, and the subsequent infringement proceedings, concern highly localised issues. For example, the document mentions one infringement proceeding concerning a pig-installation in County Kilkenny in the catchment area of the river Nore, which is a proposed Special Area of Conservation (SAC) under the Habitats Directive (92/43/EEC).

There are several distinct categories of infringement:

- ❑ *Non-communication* - Countries fail to adopt national legislation to transpose Directives within the prescribed time limit;
- ❑ *Non-conformity* - In this case a country's national legislation does not conform with the requirements of the Directive. Problems with non-conformity are concentrated in four areas: waste, water, nature and environmental impact assessment. In the sector of waste, conformity problems mainly concern the incorrect transposition of the Waste Framework Directive into national law;
- ❑ *Bad application* - In these cases, public authorities (which may include local authorities) fail to implement certain derived or secondary obligations contained in the EU Directives, such as setting out plans, classifying sites and designating areas, adopting programmes,

enforcing standards, submitting monitoring data, reporting etc. Bad application cases are concentrated in four sectors - water, waste, nature and air.

The purpose of the Annual Survey is to provide systematic, reliable and transparent information to the public about domestic compliance with EU environmental law. It is worth noting is that much of the data included in this report dates from 2005 - since then some progress has been made. Also, some of the infringement proceedings are of a technical nature and are often resolved before Court proceedings begin. The full text of the survey can be found at:

<http://ec.europa.eu/environment/law/implementation.htm>

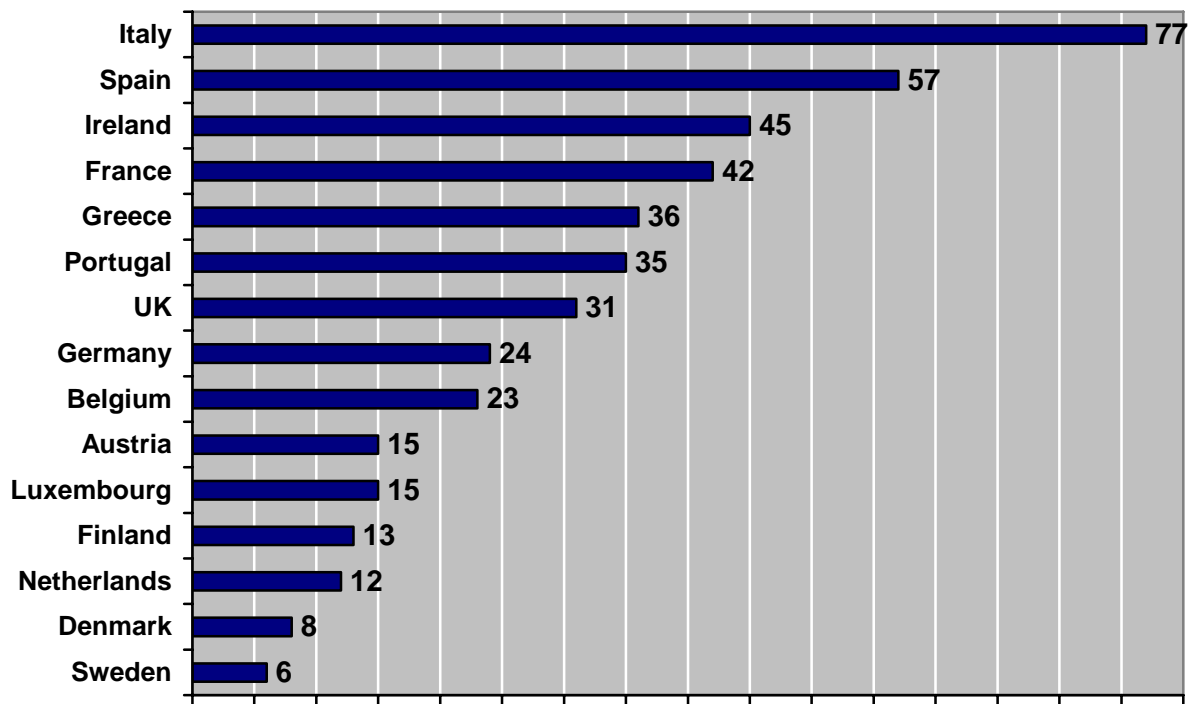
The number of cases against the 15 'old' EU countries covered in the report is illustrated in the following table.

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### Number of Open Infringements at end-2005 concerning EU Environmental Legislation per Member State\*



Source: *Seventh Annual Survey on the Implementation and Enforcement of Community Environmental Law, 2005* (SEC(2006) 1143), pp. 66-68. Figures for 10 new Member States are not shown due to difficulties in comparison.

\* Includes cases opened by the Commission against Member State related to non-communication of domestic legislation to comply with EU Directives, non-conformity, and poor application of legislation