

European strategy for soil protection: the Dutch position

In response to the European Commission's invitation to comment on the ideas it has presented, and to the Internet consultation, the Netherlands wishes to present its views on a European soil protection strategy. This position is written in cooperation with regional and local authorities.

The Netherlands believes that an effective soil strategy should be devised in the short term to protect the ecological and social functions of the soil and, in the light of sustainable development, to encourage sustainable soil use and management.

The Netherlands would expect the strategy to

- support and strengthen national, regional and local soil policies;
- contribute to the EU's prosperity and competitiveness by protecting and developing soil's various functions;
- reduce the distortion of competition caused by cost differences;
- promote the functioning of the internal market by harmonising soil protection requirements in admitting goods to the market;
- prevent or contain cross-border problems with soil.

Member states and regional or local authorities should chart problems with or threats to soil, designate high-risk areas, and take appropriate measures – or ensure that the owners or users take them – then monitor and report on the results. The Commission could promote effectiveness and efficiency by developing and exchanging knowledge, information and best practices, and encouraging cooperation.

The strategy should fulfil the following conditions.

- It should respect the subsidiarity and proportionality principle.
- It should not require countries that have already devised adequate soil protection policies to amend extensively their legislation or policies.
- Social and economic factors should be taken into account.
- The relationship with other EU policy should be clear.
- It should not lead to disproportionate claims on EU budgets.
- Given the diversity and heterogeneity of soil in the EU, it should contain no quantified objectives for soil quality or detailed regulations.

A European framework should prompt and support a joint process in the member states. The Netherlands favours a strategy to be implemented via recommendations or a action programme by European Parliament and Council rather than a directive. The Netherlands believes that binding instruments at EU level will produce added value in case of cross-border problems with soil, amendment of other environmental directives or admission of products to the market.

The following background document explains and illustrates the above, in the light of Dutch experience of soil policy.

What the Netherlands expects from the European soil protection strategy

Background document

Introduction: the forthcoming Commission proposal for a strategy and a directive

- In 2002, both the Council and the European Parliament responded favourably to the communication from the Commission entitled Towards a Thematic Strategy for Soil Protection.
- The European Commission is currently working on proposals for a strategy in the form of a package comprising a communication from the Commission and a proposal for a soil directive. The Commission put forward its ideas during presentations such as the one organised for national experts on 30 June 2005.
- The Commission also held an Internet consultation to give citizens and organisations the opportunity to fill in a questionnaire (closing date 26 September).
- The Commission's proposals are expected to be submitted to the European Parliament and Council in late 2005.

The presentations showed that the Commission is planning to include the conceptual framework, a description of the way forward and the actions envisaged at European Level in the communication. The proposed directive will oblige the member states to implement the soil protection strategy at national level by charting the problems encountered in their own countries, designating high-risk areas, drawing up action plans, and monitoring their effects. It would be up to the member states themselves to set soil quality objectives.

The Dutch position to date

The Dutch government has indicated on several occasions that it is in favour of a European soil protection strategy, since it recognises the importance of sustainable soil use and management and feels that a Europe-wide strategy is needed. However, the Netherlands also identifies the potential disadvantages, such as more rules and regulations, and a heavier administrative burden for citizens, organisations and government authorities. To the Netherlands, it is important to aim for maximum effect, at the lowest possible cost. This paper examines the aims the European strategy should help to achieve, looks at the best way of

going about this, given the advantages and disadvantages for the various parties involved, and discusses the implications for the plan to present a directive.

Vital to protect and use soil sustainably

Soil is essential to life. It is literally indispensable as a source and sink of nutrients, water and genetic material, as a regulator of life cycles, as the habitat of most organisms and as the bearer of life above the ground. People too are dependent on soil. For every society, fertile soil, clean water for drinking and irrigation purposes, minerals and timber are the basis for survival. People will always use the soil, and it is crucial for society that it can continue to fulfil all its uses as well as possible and for as long as possible. That is why soil is a priceless resource, which must be protected.

Soil management in the Netherlands

The Netherlands has a long tradition of human intervention to make soil usable – through cultivation, drainage, dike building, peat cutting, reclamation, fertilisation, raising and levelling soil levels, irrigation, ploughing and so on. The result is a country which bears the mark of human activity, with a highly productive farming sector, and few forests or natural areas. Soil management was long geared to raising agricultural production and reclaiming and draining land to make it fit for human habitation. The main aim was quite clear – to prevent erosion, subsidence, landslides, depletion, compaction, flooding and soil disease. This was not always successful, as witness the huge stretches of once-fertile land that are now under water or covered by sand drifts. Some could be reclaimed again, but only thanks to a constant effort to keep the slowly sinking polders dry. And this too is becoming increasingly difficult, now that sea-level is rising and river water discharges are changing.

Since the 1970s, attention has also turned to diffuse and local soil pollution, acidification and eutrophication, with radical programmes and measures in the field of prevention, research and remediation. Statutory regulations for soil remediation entered into force in 1983. These were followed four years later by the Soil Protection Act, which in turn led in subsequent years to a whole series of implementing regulations relating to manure, installations, oil storage, infiltration, discharges, building materials, soil analysis and remediation, and artificial fertilisers. In the past few years, the relationship with climate change (soil as a source and sink of greenhouse gases) and the loss of biodiversity in the soil have also claimed attention.

In 2003, the various aspects of soil protection and management were linked together and efforts now explicitly target sustainable development and soil use (letter to parliament setting out policy on soil, December 2003¹). The letter also explicitly refers to the relationship with spatial planning (land use planning and planning of underground space), water management, urban development, nature and agriculture. Water and soil form subsystems within a larger whole, and should be managed as such. Land-use planning and management are important in harmonising soil capacity and vulnerability with human use functions. Nature, urban functions and agriculture are the main beneficiaries. We call this the system approach, the intention being a more integrated, area-specific strategy leading to more effective action with fewer unintentional side effects, like problems being passed down the line, or social stagnation as a result of a fragmentation or compartmentalisation.

It will be abundantly clear that the Netherlands fully endorses the importance – indeed the necessity – of protecting soil and managing soil sustainably.

Is soil protection needed at European level?

Throughout Europe, soil deserves and needs protecting. Reports and studies show that, like many other parts of the world, all European countries are faced to a greater or lesser extent with a whole range of soil problems, most of which are likely to have serious, irreversible, costly consequences.² It may be difficult to establish the nature and scale of these problems – largely because of the heterogeneity of the soil – but it is evident that, certainly over the long term, significant degradation processes are occurring which give rise to great concern.

Soil itself is not very mobile and has little opportunity to cross borders. It is also highly heterogeneous, and so problems vary widely. That is why most measures will have to be taken at local or regional level. The EU should therefore restrict itself to those issues to which it can bring added value, i.e. the creation of a common framework and strategy. The Netherlands believes that the EU should adopt such a role vis-à-vis soil, and a decision to this effect was in fact taken in 2002. The following arguments can be cited.

¹ See the Ministry of Housing, Spatial Planning and the Environment's website: www.vrom.nl

² See for instance: Down to earth: soil degradation and sustainable development in Europe: a challenge for the 21st century; European Environment Agency (EEA), Environmental issues series no. 16, 200. Environment in the EU at the turn of the century, EEA, 1999. Europe's environment; the third assessment, EEA, 2003. Science 304: 1613-1637, 2004. Reports issued by the EU soil strategy technical working groups in 2004.

- Soil degradation may affect the prosperity and competitiveness of the entire EU. It poses a threat to health and the productivity and profitability of agriculture and forestry, forms an obstacle to redeveloping and changing the function of land, entails costs for remediation and dredging, and makes landscapes less attractive for habitation and tourism etc. Effects like these are important to us all, and combating them is essential for the sustainable development and competitiveness of the European Union.
- Some soil degradation processes or impacts cross borders. More erosion can lead to higher dredging costs for member states further downriver, while sediments are often polluted. Sealing can cause more flooding downstreams. Changes in soil management and use can also have an impact at global level, on climate change for instance. Pollutants can contaminate the soil of other countries via the air.
- Some measures can only be taken at European level, because they touch on European powers, like market access for products such as building materials, pesticides and fertilisers (e.g. heavy metal content of artificial fertilisers and compost).
- A Europe-wide strategy is also needed to prevent or contain distortion of competition if varying soil protection regimes lead to differences in the costs incurred by businesses.
- To protect public health, food safety and animal welfare, the standards to be met by agricultural products should be sufficiently high in every country. After all, these products move freely throughout the European market.
- Soil policy is by its nature predominantly a national responsibility and should be so. As a result, however, gaps or flaws have arisen on the European level in relation to other issues that are dealt with on that level or need European coordination. We can mention problems that are passed on to the soil, for instance because waste flows like compost, sludge or industrial waste are disposed of in the ground, at the expense of soil quality.
- Finally, soil protection at European level could lead to greater efficiency because countries can benefit from each other's – and the EU's – knowledge and experience, and can join forces to develop knowledge.

Measures at three levels

The arguments listed above lead to the conclusion that, to protect the soil adequately, measures need to be taken at three levels:

1. a strategic framework at European level

2. general measures at European level
3. specific measures in member states at regional or local level.

The first level is the European Strategy for Soil Protection. The second could involve the amendment of EU directives, admission of products to the market and quality requirements and classes or research programmes. Such measures are desirable, provided the objectives and benefits are clear, and the most cost-effective measures are taken. Given the wide range of soils and uses, considerable flexibility is needed for taking specific measures at regional or local level.

The European Strategy for Soil Protection

Subsidiarity and proportionality should play a prominent role in the European Strategy for Soil Protection.

It should contain the following elements:

- strategic objectives
- the measures to be taken at European level
- the actions to be implemented by member states or regional or local authorities:
 - ensuring that soil issues are taken on board in other policy fields
 - ensuring that owners and other title holders shoulder their responsibilities for the soil
 - identifying and charting problems with the soil in their territory
 - informing the public about them
 - ensuring the appropriate measures are taken
 - monitoring the effects
 - reporting on them.

The Netherlands believes that the strategy should meet the following conditions.

- Incorporation in existing national legislation and policy may not give rise to problems. Like many other member states, the Netherlands already has a well-developed policy and statutory regime for soil protection. It must be possible to incorporate the European strategy into the national regime without it leading to complications. Two examples to illustrate this point:
 1. Policy concerning contaminated sites has led in the last 25 years to considerable effort and expenditure and heated debate. This has proved to be an exceptionally

difficult issue and measures have continually had to be adapted (e.g. in relation to risk assessment, objectives, funding, planning, keeping pace with social change, management of land and sludge flows, remediation methods, aftercare, responsibility, monitoring and information management). Most of the parties involved in the Netherlands (including parliament) are quite happy with the current situation and intentions. The European strategy must have no detrimental effect on either, and must in any event not lead to another period of unrest and uncertainty, and thus to stagnation in both implementing policy and social processes.

2. The Netherlands is currently engaged in a major operation to cut back on environmental regulations, and to make them simpler to implement, thus considerably reducing the administrative burden for both citizens and business. The European strategy should not run counter to this. The same applies to efforts to decentralise decision-making powers on soil and land-use planning, since local authorities are better able to take all considerations into account and to come up with solutions tailored to the local situation.

- The socioeconomic aspects of problems and measures must be taken into consideration, relating to the three pillars of sustainable development: people, planet profits.

Problems relating to the soil may be caused by socioeconomic factors, such as poor economic prospects, so that short-term thinking prevails. Farmland may even be abandoned. In analysing problems, these factors should be taken into account, otherwise any measures that are taken may prove ineffective or even counter-productive. In some cases socioeconomic policy is needed with improved soil management or improvements to the quality of soil as a spin-off.

- The relationship with other EU legislation will have to be established unambiguously. Like other member states, the Netherlands has already had to take many measures in order to implement for instance the Nitrates, NEC, Bathing Water and Water Framework Directives. Given its high population density, intensive, highly productive farming sector, high groundwater levels, and location on the lower reaches of the Rhine, Maas and Scheldt, the Netherlands has already had to make huge efforts at considerable cost to bring about change. People, particularly in the farming sector, no longer wish to be confronted with “requirements from Brussels”. Water management authorities are currently engaged in implementing the Water Framework Directive and the National Administrative Agreement on Water. For them, the burning question is how the European Strategy for Soil Protection relates to the Water Framework Directive, particularly when it comes to groundwater, river sediment and sludge.

Duplication or inconsistencies in the strategies or legislation on these issues must be avoided.

- The soil strategy should not lead to disproportionate claims on the - over-burdened - European budget.

Restraint is needed to avoid that measures that should be financed by polluters or beneficiaries, are funded from the European budget.

- As stated above, account must be taken of the diversity of soil and its uses, the problems they have given rise to and the solutions. Quantitative soil quality objectives, detailed rules or specific measures do not therefore belong in a strategy at European level.
 - There are at least 320 types of soil in Europe, and its composition varies widely within very small areas, making it very difficult to establish precisely if changes occur over time;
 - soil functions vary according to climate and hydrological conditions;
 - there are uncertainties about assessing risks or identifying problems;
 - different attitudes exist as to what is sustainable and unsustainable, acceptable and unacceptable;
 - measures must be tuned to the specific situation.

The Netherlands does see added value in binding instruments at EU level for cross-border problems with soil, amendment of other environmental directives, admission of products to the market and quality requirements and classes.

The form the European Strategy for Soil Protection should take

The Commission intends to present the strategy in the form of a communication and a proposal for a directive, making implementation legally binding. The Commission regards this as the best way of guaranteeing that the measures needed are taken in all member states and regions. Given the nature of the problem, the Commission is planning a fairly lightweight directive.³

³ The outlines of the directive as presented on 30 June go a step further on some issues than what can be characterized as a "light directive". For example in defining what constitutes a problem (for instance a contaminated site or elements that need to be investigated to establish whether erosion is a threat), and in introducing the obligation to hand over a certified land status report to the buyer. The question is whether elements of this kind are appropriate to the kind of lightweight directive envisaged by the Commission. There is a European and competition dimension to protecting the purchasers of contaminated land (purchasers from other countries; competition for business locations), but the method proposed is not the only conceivable one. The Netherlands is furthermore opposed to a committee gaining regulatory powers.

A directive is not Netherlands' preferred option. Instead, the Netherlands would prefer the European Parliament and Council of the EU to issue the strategy as Recommendations or an Action programme. An example can be found in the - related - strategy regarding Coastal zone management.

The advantages are that less energy would need to be spent on ensuring a legally watertight text and total harmonisation, no new European legislation would be created, and there would be more emphasis on public support, and the commitment of the member states, and of local and regional authorities. It would be in line with the Better regulation effort of the European Commission⁴

At present, there is political support in the Netherlands for a European Strategy for the Protection of Soil. There is none for a directive on the issue.

From the European angle

The Netherlands stresses that it is not urging this route to be taken because it happens to suit its own situation, but because it is convinced that this will benefit the long-term development of the EU and sustainable soil protection.

The Netherlands has learned that an over-centralised policy with uniform standards and strict rules presents too few prospects for sustainable soil management, with citizens, professional users, and local and regional authorities all contributing their own expertise and taking their responsibilities.

The Netherlands welcomes the European Union's plans to create a framework for the sustainable use and management of soil.

⁴ Press release of the EC 27 september 2005; MEMO/05/340