

British Aggregates Association

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Rebecca Taylor
Defra - Soils Policy Team
Area 3C, Nobel House
17 Smith Square
London, SW1P 3JR

Dear Rebecca

Consultation on the proposed EU Soil Framework Directive and initial Regulatory Impact Assessment

Thank you for the opportunity to comment on these proposals.

The British Aggregates Association (BAA) represents the interests of some 80 members of which 60 are independent and privately-owned SME quarry companies throughout the UK with some 10% of national output and who operate out of over 100 sites. We are part of the consultation and lobbying process both in the UK and Europe – and are also represented through the CBI (Confederation of British Industry) Minerals Group and CPA (Construction Products Association).

Existing legislation has ensured that no gap exists in terms of soil protection from the impacts of the mining and quarrying industry.

We believe that this proposed Directive should ideally be abandoned as it has been poorly thought-through, has enormous duplication and room for potential ambiguity, and no perceived benefit. If this is not possible we would look to:

- Exclude the minerals industry from its provision.
- Ensure no duplication with areas already covered by existing legislation eg Mining Waste Directive, Waste Framework Directive, Water Framework Directive and daughter Directives, Environmental Liability Directive.
- Enable existing member state legislation to take precedent over any provisions where there is duplication.
- Ensure that soil removal as either primary extraction as a resource; or temporary removal prior to re-instatement in restoration is excluded from the scope – as this is fully and adequately covered by other EU or domestic regulation.

The responses to your specific questions are attached.

If you require any further information or clarification, or would like to discuss any aspects further please do not hesitate to contact me.

Yours Sincerely



Peter Huxtable
MA(Cantab) CEng FIQ FIMMM
Secretary

BAA Response to the consultation questions

Initial questions

A) What are your views on the current level of soil protection measures in the UK considering the risks and threats faced by soils, including those identified by the Commission?

We feel that the current level of soil protection measures in the UK is totally adequate.

B) If you consider these measures to be inadequate, do you believe that any gaps are best dealt with on a common basis across the EU, for example to avoid distortion in competition, or better dealt with at a domestic level?

Measures are adequate – no further actions from EU required.

C) What, if any, gaps exist in terms of addressing soil protection at an EU level in particular the risks identified by the Commission?

The risks identified are already covered by other EU policies, such as Mining Waste Directive, Waste Framework Directive, Water Framework Directive and daughter Directives, Environmental Liability Directive.

D) Does the solution to these gaps lie in amending existing EU Directives, or in introducing a new overarching framework for soil protection?

Any Directive should only cover items **not** already covered in other Directives (as stated above)

E) Are there any existing EU provisions that give some protection to soils which, in your view, do not work or which could do with simplification?

A greater emphasis on the implementation and enforcement of existing policies is required before any new proposals are brought forward.

F) In terms of the risks and threats identified by the Commission, how urgent are these problems? Is there sufficient evidence to tackle them now?

No urgency – and insufficient evidence to progress.

G) Who should bear the costs involved in any new obligations? Should we follow a polluter pays approach, a market-based system where, for example, a property developer pays the cost of remediation, or should these costs fall to taxpayers?

N/A

Consultation questions

Q.1 What are your views on the scope of the proposed Directive, in particular the definition of soil and the soil functions which are listed?

Must recognise the vital economic value of activities involving soil like temporary removal to enable mineral extraction – or indeed permanent removal as a raw material or in order to construct houses, hospitals and operating plants!; none of which result in any environmental impacts other than those covered by existing legislation.

The proposed definition does not distinguish between soil damage and degradation resulting from natural processes (eg erosion) and from human activity.

Q.2 Do you think the proposed Directive seeks the right level of protection for our soils?

The proposal is disproportionate and overly prescriptive. The UK has an existing regulatory framework to identify and remediate at risk and contaminated soils

Q.3 Do you think it is important for Member States to address natural degradation as well as that caused by human activity?

Whilst it is important to limit the degradation and loss of valuable soils, this is not best achieved through a European Directive, and certainly not unless the scope excludes items already covered by current EU or member state measures; not least to eliminate duplication and possible ambiguity.

Q.4 Do you have any comments on these definitions? Do you think it is important to clarify any other terms in the proposed Directive?

All of the definitions should be listed under one Article for clarity and ease of reference. The definition of soil is very broad and will lead to problems where it covers extractive industries such as sand and gravel and coastal and river deposits. .

Q.5 Do you consider there is a significant benefit in expanding the duty, as provided by the proposed Directive, to carry out an environmental assessment in so far as soil is concerned, so that it covers all other sectoral policies which may have a significant impact on soil? If so, which particular sectors of policy do you think impact on soil and need to be covered? And what are your views on leaving out the duty to consult in relation to these additional sectors?

We do not see any benefit to be gained by expanding the duty to conduct environmental assessments as these provisions are already included in the SEA and EIA Directives and other regulation covering the quarry industry.

Q.6 What are your views on how this provision could be improved, for example, should it instead only refer to the SEA Directive in the recitals and include this additional duty in respect of soils only in respect of policies not already covered by the SEA Directive?

No case has been made for additional EU level regulation in this area.

Q.7 There are a number of ways in which this proposed Article could be adapted. Please let us have your views on how this provision could be amended.

The current Article 4 is disproportionate in scope, confusing in who it applies to and unclear as to how it relates to other elements of the proposed SFD. We feel that this is another area of the proposal where a risk based approach is needed and a threshold should be applied based on a risk assessment and a socio-economic assessment.

Article 4 as currently proposed will conflict with existing environmental regulations which apply to operators and land owners as opposed to land users. Focusing on environmental outcomes to be achieved might remove this confusion.

Q.8 What activities, which are not already regulated in the UK, if any, do you consider may have a significant adverse impact on soils?

None.

Q.9 Do you have any comments on the issues raised, and on our initial analysis of costs and benefits?

We agree with the issues identified in the cost benefit analysis; but the proposal is so vague, it is very difficult to quantify the costs and benefits.

Q.10 Do you consider there to be significant benefits in having new EC legislation that deals with soil sealing? If so, what are the benefits and do they in your view exceed the potential costs?

We do not see any UK benefits to the provision as water drainage and run-off are already covered in existing or forthcoming provisions including the Planning Reform Bill and the Water Framework Directive. An EU *one-size-fits-all* approach is neither needed nor appropriate!

Q.11 Do you think there would be value in amending the draft Directive for a range of options?

No.

Q.12 What are your views on amending this provision so that it only requires mitigation of new soil sealing through use of permeable construction materials?

It is sensible to limit the scope of the provision on soil sealing to new developments as the potential cost of retrofitting permeability to existing sealing would be significant.

Q.13 Do you agree with our concerns and our assessment of the costs and benefits as set out in our initial RIA?

The local planning regime and the Water Framework Directive are also relevant in relation to soil sealing.

Q.14 Do you consider that this risk-area/programme of measures approach is appropriate? How do you consider that this provision could be improved, for example, what are your views on requiring Member States to put in place programmes of measures to address degradation processes with an adequate focus on higher risk areas and higher risk activities (but without requiring formal identification of risk areas) or requiring more clearly harmonised standards?

The proposal is overly prescriptive in this area. The Directive should focus Member States on the environmental outcome to be achieved, based on a risk assessment, and leave Member States the freedom to decide how to do this.

Q.15 Is there a significant benefit, in your view, in having a common EU-wide framework in place?

There is no benefit whatsoever to the UK from a common EU-wide framework. We have already a comprehensive framework of existing regulations covering planning, drainage and contaminated land. The forthcoming Environmental Liability and Water Framework Directives will add to the level of environmental protection and there is no need to duplicate any of these provisions.

Q.16 Do you consider that the correct degradation processes have been listed for the purpose of identifying risk areas? What are your views on seeking to have compaction removed from this list so that it is dealt with only under the proposed Article 4?

The list of degradation processes does not distinguish between natural and human causes of degradation; or whether or not the degradation is a significant risk. The inclusion of compaction in the list is a duplication of the measures to deal with soil sealing in Article 5.

Q.17 Do you consider that the definitions of soil erosion, soil carbon and the other degradation processes are correct considering the range of soil functions which the proposed Directive seeks to protect?

The definitions within the proposed Directive are unclear. Having them spread throughout the proposal is unhelpful and they should be grouped together under one Article.

Q.18 What are your views on the inclusion of salinisation as a threat – do you consider that it should be defined to exclude managed retreat?

Any provision to cover salinisation should be defined to exclude managed retreat. Managed retreat policies have been determined on the basis of a socio-economic assessment and reversing these decisions is likely to be costly and disproportionate.

Q.19 If the proposed Directive were to require detailed risk-mapping, is it important for it to require Member States to use all the Annex I factors or could the methodology be left to individual Member States?

Making prescriptive European requirements would lead to unnecessary re-assessments – with cost attached but no environmental benefit. Any methodological provisions should be guidance for Member States to follow if they wished, rather than being made mandatory.

Q.20 Do you agree with our concerns and our estimate of the costs and benefits of this provision?

It is clear that there will be increased costs and these will be significant if no threshold is set below which there is no need to act.

Q.21 How important do you think it is for us to be permitted to continue to use existing CAP measures to deliver the required Programme of Measures? Do you think such existing measures in their current form are adequate for addressing soils issues in high risk areas?

Existing measures should be used where they are delivering the required environmental outcomes in a cost effective manner.

Q.22 Would you like the Government to be able to use a range of measures, from guidance and codes of practice to regulations, to implement this proposed Article?

It is essential that the Government is able to use a range of measures including non-regulatory measures to deliver the environmental objectives of the proposal in the most cost effective manner.

Q.23 Do you agree with our concerns and our estimate of costs and benefits?

Yes. Indirect and administrative costs must also be included.

Q.24 Are there any benefits in having this provision?

No.

Q.25 How do you think this proposed Article could be amended to improve it?

The Article should set out the environmental objective to be achieved and leave Member States flexibility in how this is achieved, including through the implementation of existing and forthcoming legislation.

Q.26 Do you agree with the costs and benefits identified in our preliminary analysis? How do you think the proposed Directive could be amended to reduce the costs involved whilst achieving the same benefits?

Yes.

Allowing Member States flexibility, including the use of existing legislative and other measures to achieve an overall environmental objective based on risk as opposed to hazard would greatly reduce the potential costs associated with the proposal.

Q.27 Should the proposed Directive enable Member States to retain their existing national approaches to the identification of contaminated land, provided these deliver some basic common requirements, or should they be required to follow a common detailed procedure? If so, what are the basic common requirements that can in your view reasonably be included in the proposed Directive?

Yes – the Directive should not apply where adequate member state coverage is already in place.

Q.28 What are your views on the Commission's definition of contaminated sites? Is it appropriate?

This could lead to an overly precautionary and non-risk based approach to the identification of contaminated sites.

Q.29 What are your views on the list of potentially polluting activities set out in Annex II?

We have significant concerns regarding the list of potentially polluting activities set out in Annex II. Although the activities may have the potential to pollute soil, this does not mean that pollution has or will occur. We strongly oppose approach and would prefer to see the focus of any measures based on risk, rather than perceived hazard.

Existing legislation has ensured that no gap exists in terms of the protection of soil from the impacts of quarrying and mining.

Q.30 Do you consider that it is necessary to test for dangerous substances at all sites on which potentially polluting activities have taken place or do you think testing should be targeted based on a risk assessment?

Any sampling programme must be carried out on the basis of risk assessment. The implications of testing all sites where a 'potentially polluting activity' might have occurred would be unacceptable.

Q.31 Do you think the timescales given in the draft Directive for compiling and reviewing the inventory are reasonable?

No.

Q.32 How do you think this requirement will affect land values?

No particular view but could be unnecessarily negative.

Q.33 How do you think this provision could best be amended to minimise any possible negative impacts that this Article may have in Great Britain?

This provision should be removed as a requirement from the directive.

Q.34 What are your views on the costs and benefits of this provision? What effect do you think this will have on land prices?

No view.

Q.35 What do you think are the public health/environmental benefits of the requirement to produce Soil Status Reports? Do you consider that they will benefit business activity?

None.

Q.36 Do you agree that contaminated sites as defined should be remediated? Do you think these provisions could be amended to make them more proportionate? If so, how?

Sites should only be remediated to the standard required for the future use of the site. Sites where remediation is not justifiable based on a socio-economic assessment should not be required to be remediated.

Q.37 Should this provision be aligned with existing European Directives so that where they apply, those Directives' arrangements concerning remedies will operate as now?

Yes.

Q.38 Do you agree with the costs and benefits identified in our preliminary analysis? How do you consider these costs could be reduced whilst achieving the same or similar benefits?

Yes, and we think it most appropriate to highlight the potential impact on SMEs. Avoiding regulatory duplication will reduce the costs.

Q.39 What are your views on requiring Member States to put in place appropriate mechanisms to fund remediation of orphan sites?

Sites should only require remediation where the future use of the site requires it. It will be up to Member States to decide whether or not they should pay for the remediation of orphan sites. Existing environmental regulations set out provisions which include site restoration.

Q.40 What are your views on requiring Member States to have a public 'National Remediation Strategy' in place? Do you think this will affect existing national approaches such as remediation by developers?

It is right to point out in the consultation document that there will be an ongoing administrative requirement and associated cost for Member States in having a National Remediation Strategy.

Q.41 Do you agree with our concerns and the costs and benefits identified?

Yes.

Q.42 What are your views on this provision (Article 15) and how could it be improved?

It is important to target awareness raising at those who will be required to deliver soil protection and remediation under the proposals.

Q.43 What are your views on this provision (Article 16) and how could it be improved?

No particular views.

Q.44 Do you consider that this platform for the exchange of information would be useful for the Government and stakeholders?

It is unclear what additional benefit this platform for exchange of information would add.

Q.45 Is this too narrow a range of information? If so, what else should be included?

Discussions around the value of soil and the risks to it should be covered in respect to planning, agriculture and other land use. A new forum would not be beneficial in achieving this.

Q.46 What are your views on these provisions (Articles 18-24)?

We are concerned that a move to harmonise risk assessment methodologies across Europe will lead to an overly prescriptive. We agree with the point raised in the consultation paper that 2 years is a very short time in which to implement this type of proposal.