

NICOLE Position Paper on the Common Forum
PROPOSAL OF ALTERNATIVE TEXT FOR A FRAMEWORK DIRECTIVE
ON SOIL PROTECTION

NICOLE is a network of representatives of industry, service providers and the scientific community. It was formed in 1996 with an aim to bring together professional involved in the management of land and water contamination in the member states of the EU – www.nicole.org.

We recently reviewed the current Common Forum proposal on the Framework Directive on Soil Protection, dated autumn 2011. NICOLE's Regulatory Working Group has commented on earlier versions of this draft Directive, in January 2007, July 2007, October 2008 and November 2008. In general, we support many of the current proposals made by the Common Forum, but we have a number of important issues that we consider to be critical for the sustainable protection and management of soil. In line with NICOLE's focus and expertise in the management of contaminated land, our comments focus primarily on soil contamination aspects.

In the event that these comments and proposed amendments would benefit from further explanation, we would welcome the opportunity to make further representations.

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Chair Of Nicole's Regulatory Working Group

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Suggested Amendments

NICOLE welcomes many of the changes contained within this document and was particularly pleased to see the explicit reference to the risk based approach and the reference to sustainable remediation and proportionate costs. We are also pleased to see the balanced approach to bring contaminated sites (such as brownfields) into beneficial re-use without jeopardising the aims of the Directive to protect human health and the environment.

NICOLE Amendment 1 Article 8.4

Common Forum Proposal amendment

Proposed NICOLE

<p>Within seven years from..., Member States shall compile and publish a register of priority sites for investigation...The register should continue to evolve over time and will be updated and published accordingly.</p>	<p>Within seven years from..., Member States shall compile and disclose upon request a register of priority sites for investigation... The register should continue to evolve over time and will be updated and disclosed upon request.</p>
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Justification

NICOLE is strongly opposed to the publication of a register of potentially contaminated sites. We do not believe such a register can work and will simply result in property blight. If there is such a register it should either made available at the request of interested parties and/or it should be restricted to those sites that have been confirmed to be contaminated, namely those that pose a significant risk of harm to human health and of the environment, not all potentially contaminated sites.

An alternative to the register may be to ensure that the public has access to information on historical land uses and in particular information where activities listed in Annex II took place.

NICOLE Amendment 2 Article 10.1

Common Forum Proposal amendment

Proposed NICOLE

<p>Member States shall ensure that a soil</p>	<p>Member States shall ensure that a soil</p>
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<p>status report is made available to the relevant authority :</p> <ul style="list-style-type: none"> - by the owner of that site or the prospective buyer when the site is sold, making it also available to the other party in the transaction, and - by the owner of that site or a relevant third party when there are changes in the type of land use changes, including land development, which the Member State considers relevant. 	<p>status report is made available to the relevant authority :</p> <ul style="list-style-type: none"> - by the owner of that site or the prospective buyer when the site is sold, making it also available to the other party in the transaction, and - by the owner of that site or a relevant third party when there are changes in the type of land use changes, including land development, which the Member State considers relevant.
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Justification

Although article 10 (previously article 12) on the soil status report, has been weakened, NICOLE still questions the benefit of a soil status report at any property transaction. Valuation of land is sufficiently embedded in due diligence processes and contractual agreements between two parties, e.g. the seller and the prospective buyer. In addition, the Directive on Industrial Emissions (IED) also contains a baseline provision and obligatory periodic soil and groundwater monitoring which clearly overlaps with this requirement for a soil status report and should be used as an alternative to this soil status reporting requirement. Further, providing a soil status report at each transaction in a cumbersome process and will severely inhibit the transaction. NICOLE however sees the benefit of a soil status report when land use changes.