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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
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Subject:	Soil Monitoring Law Directive: Follow up to the informal VC of the WPE on 27 July 2023 - comments from a delegation

Following the above WPE meeting and the call for comments (WK 10383/23 INIT), delegations will find attached comments from Estonia.

ESTONIA

comments on the Soil Monitoring Law proposal

In our opinion, the EU Soil Monitoring directive is well justified. It was prepared thoroughly, with the broad involvement of representatives of Member States, stakeholders, and soil scientists. We welcome the European Commission's efforts to issue the legislation bearing in mind the diversity of soils and other local conditions and the need for flexibility during the implementation. It is good to note that this legislation covers all soils that are essential for the provision of ecosystem services of vital importance to humans and the environment. We also welcome the fact that the EU mission: A Soil Deal for Europe and EU Soil Observatory as other key actions of the EU Soil Strategy have already been launched.

As this directive is very technical, we would appreciate the initiatives taken to organise the special expert meetings in relation to setting up the monitoring system, especially for the issues related to Annex I and II.

Hereby are the issues Estonian experts would like to comment or get a better understanding bearing in mind they are not official:

1. We kindly ask COM to specify the terms „natural and semi-natural land“ and „managed soils“, using also some examples to illustrate it better. Do we understand it correctly that in some cases natural land can be also managed? We kindly ask for examples of managed and non-managed natural areas to understand better the concept of land managing in this directive. Is agricultural land always seen as semi-natural land (even if not cultivated)? Is there difference between different types of agricultural land like fields and permanent (semi-natural) grasslands/meadows? How about managed forests?
2. We find it very important that „soil sealing“ should be also defined under article 3.
3. We also kindly ask COM to specify the terms “land take” and “soil sealing”. What is their difference and interconnections? Land take is defined as the conversion of natural and semi-natural land into artificial land. But is artificial land only this kind of land that is absolutely air/water impermeable and how permeable soil has to be to be considered sealed? Same question about reverse land take. When can we say that the land take has been reversed? If asphalt lot is turned into gravel road is that considered as reverse land take?
4. We find the term “soil investigation” to be defined too narrow compared to its common use. All of the soil descriptors listed in the directive are also part of soil investigation.
5. Monitoring of unmanaged natural soils is mostly necessary, but we do not consider that those soils should meet the healthy soil criteria. The soils in natural areas are not directly affected by human activity and should therefore not be assessed based on the criteria laid down.
6. Article 4(2) soil districts parameters: what is enough homogeneity? This article's point 1 and 2 have very different level of detail which makes it hard to understand the real requirements for the soil districts.

7. Article 6(4) „in-situ soil sampling“ by the COM – for clarification, does COM compensate both the sampling as well as the analysis?
8. Article 10(1a) – Could you please open a bit more the concept of „gradually implemented“ in this context?
9. Whether all the descriptors in Annex I are to be determined during a single monitoring exercise were they relate to a single sample? Should there be one sampling point from which all the descriptors listed in Annex 1 shall determine or is it more flexible?
10. The list in which the criteria laid down cannot be met due to natural conditions (including managed soils) should be supplemented. For example, since no fertilisers are used on Estonian forest lands, we do not consider it necessary to monitor the descriptors of salinisation and excess nutrient content in soil (extractable phosphorus, nitrogen). Similarly to the salinisation, for a number of other descriptors the criteria should not be met because of natural characteristics, e.g. in the case of Estonia, the excess phosphorus content in the soil. Phosphorite is a rock that contains large amounts of phosphorus and Europe's largest reserves of phosphorus are therefore located in Estonia. As a result, there are naturally high phosphorus soils in Northern Estonia.
11. For the soil erosion indicator, we find that measuring the risk of soil erosion would be more informative and would give a chance to continue existing data and practice. Almost all existing maps are based on the identification of the risk of erosion, and it is not practical to measure the actual erosion rate.
12. Loss of soil organic carbon descriptor justifies itself for claysoils, but for the rest we do not find this to be the best method to get objective results.
13. Subsoil compaction – do we understand it well that if some of our soils do not have B or E horizon, the subsoil compaction should not be monitored and assessed? Should subsoil compaction be measures also in organic soils?
14. In Annex I part B, reduction of soil capacity to retain water is not clear enough with current definition. Could this be also further explained?
15. In Annex I part C at soil biodiversity indicator the term „dry soil“ should be more specific like „dry soil sample“ or „dried soil sample“.
16. In Annex I part D, land take indicator– when should be counted? From the moment on the decision has been made or when the land has been actually taken or sealed?
17. Also, the sustainable soil management principles in Annex III are very much driven by the practices used in agricultural land instead of being applicable to all different type of managed land/soil. Will different soils depending on land use like urban soils, agricultural soils have each their own list of positive and negative managing practices?
18. Several of the principles of sustainable soil management listed in Annex III to the proposal overlap with the general principles of integrated pest management set out in

Annex III to Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action on the sustainable use of pesticides, in particular (preventive measures). In order to avoid duplication and potential implementation problems, reference should be made. Based on the above clarifications and practice so far, we propose to supplement the list of programmes, plans, objectives and measures mentioned in Article 10 and listed in Annex IV. The following line should be added to the list “National action plans for the sustainable use of plant protection products in accordance with the Directive:

19. With regard to point (i) of the sustainable soil management principles, we consider that, in addition to ensuring their optimal water levels, it is also necessary to allow them to be kept as grassland, with a significantly lower CO₂ emissions compared to arable land. We consider it important to use various restoration measures on peat soils, including paludiculture and the restoration of areas into wetlands, but the exact method of restoration depends on local conditions and opportunities.
 20. We would also like to express our concern about the fact that data protection is not mentioned in this directive, although also data on private properties and from private owners is included and therefore some data protection measures should be included and clarified in the text of this directive. Moreover, soil sampling on private properties raise questions on how is this planned to be organised, as this is private property, but at the same time common environmental resource.
 21. ANNEX II, part A(5): “The size of the national sample shall meet the requirement of a maximum percent error (or Coefficient of Variation) of 5% for the estimation of the area having healthy soils. The Commission sample for the survey set under Art 6(4) may contribute to a maximum of 20 % of the size of national samples. The allocation and size of the sample shall be determined by applying the Bethel algorithm (Bethel, 1989)⁵ accounting for the required maximum estimation error.” – in metrology and related disciplines “uncertainty” is more commonly used term instead of “error”.
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