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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 6 October 2023 - comments from delegations

Following the above WPE meeting and the call for comments (WK 12853/23 INIT), delegations will find attached comments from CZ, DK, DE, EL, LV, LT, PL, RO, FI and SE.

GERMANY

Proposal for a Directive on Soil Monitoring and Resilience (Soil Monitoring Law)

Written comments and questions

Working Party for the Environment – 27. July 2023

Germany welcomes the fact that the Commission has presented the legislative proposal along with a comprehensive impact assessment. Given advancing soil degradation and other, intersecting and cross-border crises, we need to advocate for healthy and resilient soils more than ever before. In this way, we can simultaneously make an important contribution to the preservation and enhancement of biodiversity, strengthen Nature-based Solutions, promote climate adaptation, increase resilience to natural disasters and increase the security of supply of food and other renewable raw materials. Important tools in this process include establishing a solid data base through a coherent soil monitoring framework, assessing soil conditions based on the data compiled, taking measures for sustainable soil management and identifying and dealing with contaminated sites.

Germany is pleased to have the opportunity to submit questions. Our goal is to work together to create an effective legal framework that lays out the details for ambitious soil protection and sustainable soil management. Germany reserves the right to direct specific technical questions to Commission representatives over the course of further negotiations.

Questions to the European Commission on the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law) - 2023/0232(COD).

General aspects

- The Directive aims to continuously improve soil health in the Union and to achieve healthy soils and maintain healthy soil condition by 2050. Is it the Commission's view that the draft is suitable for preventing unhealthy soil conditions from occurring or changes to that effect?
- The wording of the law does not contain any binding measures for the restoration of healthy soil condition. In the Commission's opinion, are measures at Member State level and regular reporting on these measures sufficient to achieve the goal of healthy soils by 2050?
- The draft directive does not address any large-scale soil pollution. What is the Commission's approach to tackling the problem of "diffuse pollution"?
- What is the link between the draft directive and the EU mission "A Soil Deal for Europe"? How does the knowledge of stakeholders involved in the mission find its way into the work on the Directive? Does the Directive's impact assessment incorporate the knowledge already acquired?
- Plants and food as well as due consideration for the natural laws of life in crop farming and cultivation and the further development of varieties play a significant role in soil quality and resilience. How is this fact reflected in the draft directive?

- The Member States are given some flexibility to interpret the requirements. How does the Commission plan to ensure consistency between the LUCAS Soil support and the nationally adapted programs?
- The Commission does not explicitly address the interface between soil protection and circular economy. Does the Commission not see safe handling of excavated soil as part of soil protection, also with a view to resource conservation?
- What are the implications of the draft directive for the transport sector and its infrastructure? Are these covered in the impact assessment?

Chapter I:

Applicability to all soils

- Article 2 stipulates that the Directive shall apply to all soils. The Directive does not contain different provisions for urban soils, agricultural and forestry soils, unmanaged soils, etc. or for different soil types (peatland or organic soils, naturally acidic soils, mineral soils, forest soils, ...). The descriptors do not distinguish between the different types of soil use either. The descriptors and methodologies outlined focus mainly on mineral, agricultural soils. This could prevent other soils (forest soils, organic soils, urban soils) from being correctly monitored. It seems fundamentally necessary to differentiate among soil types; it should still be possible to make these distinctions at national level. Does the Commission intend to make distinctions based on land use and specific soil type? Can these distinctions be made at national level?

Soil districts

- How can the use of existing administrative units as defined in Article 4(2) be ensured? How can the soil districts be specifically classified, in particular their function and size?
- Has the Commission already checked that the planned soil districts conform with NUTS1?
- Can an authority also be responsible for several soil districts? When small soil districts are created, the costs increase disproportionately.
- How can sampling points be reliably interpolated to soil districts; especially with heterogeneous land uses and soil types within soil districts?
- Dealing with point-source contamination in soil health assessments. Can a contaminated “hot-spot” that is discovered (not previously suspected) within a soil district be left out of the soil district assessment as a “contaminated site”?

Evaluation standard

- Why did the Commission choose the “one-out-all-out” principle? This does not allow gradual improvement of soil health up to the “all in” level to be represented. Did the Commission also consider other assessment criteria (e.g. traffic light system) and why were they not selected?
- Does the “one-out-all-out” principle apply to all soils in a soil district or should a distinction be made between the different uses?

- What is the minimum number of sampling points and what percentage of them must have a conspicuous parameter for the soil to be considered unhealthy throughout the soil district?

Chapter II

Soil monitoring

- Some of the proposed monitoring methodologies differ significantly from those used at national level. The use of transfer factors is accompanied by uncertainties and is not always effective. For Germany, it is important that existing soil condition surveys and the previously collected data can continue to be used. How can existing national soil monitoring systems be integrated?
- So far, the number of sampling points has not been specified. How can it be ensured that the Member States can be reliably compared without a specified number of sampling points?
- The draft does not contain any specifications on sampling depths, but these are essential for interpreting the results. What sampling depth does the Commission envisage?
- Are there plans for a uniform provision on access rights for monitoring?

Soil descriptors

- From the Commission's perspective, do the indicators and descriptors in the draft provide sufficient methodologically necessary data and assessment criteria for changes to soil not related to substances?
- How much scope is there to adapt the descriptors (choice) and criteria (limit values) at national level?
- The methodologies listed in Annex II focus primarily on mineral, agricultural soils. Can methodologies other than those in Annex II be defined for other land uses or special soil types (e.g. organic soils)?
- Is there a time frame for defining the indicators in Annex I, Part C ? Should these criteria, especially those relating to soil biodiversity, not be taken into account in the soil health assessment according to Article 9 No. 2 as well and thus be taken into account in the description of good biological status for soils?
- It is necessary from a technical perspective to adapt the descriptors to regional conditions. To what extent can comparability across the EU be achieved here and is this even necessary?
- The soil health assessment should be based on the descriptors and criteria described in Annex I and the sampling prescribed in Annex II. How are the different land uses/soils taken into account in sampling and assessment (see above)?
- How should the data collected at the sampling points be interpolated to the area in the soil district? Will there be a uniform methodology for all Member States? What are the requirements for the methodology?

Measures for unhealthy soil conditions

- Should it be possible to define measures for individual areas within a soil district or do the measures always apply to the entire soil district? What does this mean for the polluter-pays principle and cost allocation?

Use of remote sensing

- How does the Commission envisage the use of remote sensing technology and temporal and spatial interpolation, including developments in the future? Which institution could perform these tasks?

Data management

- What data should be published?
- To what extent should private data on soil also be included? Should it be mandatory for authorities to survey this data?
- To what extent is protection of trade secrets envisaged?
- Does the provision in Article 6(7) cover scientific or commercial data?

Reporting period

- Why was a reporting period of 5 years (exception of land take and soil sealing, which is reported on annually) chosen? Does the Commission expect considerable and/or measurable changes in soils within this time period?
- Why does the Commission see this interval as advisable, while soil descriptors are usually very slow to change?
- Does the Commission consider different reporting periods for the different land uses, e.g. a 10-year period for forest soils, to be feasible for achieving the objectives of the Directive?

Organic contaminants

- In the Commission's view, is it sufficient to take organic contaminants into account at national level? Does the Commission aim to draw up a list of organic contaminants to be analysed and taken into account by all Member States in monitoring?

Chapter III

Land take/soil sealing

- Is the Commission's approach only to minimise land take or also to simultaneously unseal soils to restore ecosystem services?
- Why is it not considered a contribution to the reduction of land take and the protection of soils when abandoned industrial sites are redeveloped rather than sealing greenfield sites?
- To what extent does the Directive contribute to the EU goal of "no net land take in 2050"?

Sustainable soil management

- Why does the Commission focus SSM on agricultural use, and why are there no requirements for other types of use in Annex III?

Chapter IV

Contaminated sites

- What is the Commission's rationale for focusing on or triggering soil investigations/measurements solely on the basis of suspicion and for treating suspected cases and proven contamination indiscriminately? Should there not be a further distinction between suspicions and facts in terms of the legal consequences, and should the use of alternative sources be made possible in the process?
- Why does the Commission not take into account the baseline report of the IED in Chapter IV, 14(2)?
- Would it not be advisable to use responsible substance- and area-related de minimis limits instead as they require less effort and are easier to manage?
- Is it expedient to determine the healthy condition of the soil independently of its use, especially with regard to contaminants?

Chapter V

Funding

- Soil monitoring is costly. The Commission Staff Working Document "Guidance on EU funding for healthy soils" sets out extensive funding options. Are the tools outlined suitable to financially support the tasks that need to be carried out under the Directive?
- Will a priority be set within the mentioned funding possibilities to implement the Directive and are sufficient funds available?
- What possibilities does the Commission see to support the Member States in funding soil monitoring in the long run?

Chapter VI

- What kind of committee is envisaged here and how should it be composed?

Chapter VII

- By when does the Commission need to submit the report under Article 24(2)?
- What violations should the penalties apply to? Do they refer to the regulations on pollutants/contamination or also to regulations for land managers?

LATVIA

Soil Monitoring Law Directive: Follow up to the WPE on 6 October 2023: **Written comments/questions**

Latvia would like to thank European Commission for providing information about EU funding available. However, we would be grateful for a more detailed information about which EU funding opportunities are available/suitable for:

1. investigation on contaminated and potentially contaminated sites;
2. remediation or confinement of contaminated sites.

This question is in context with our previous question about potential historical contamination in Eastern European countries. We would be grateful if European Commission could provide also information about the best other Member States' practices regarding EU funding for investigation, remediation of potentially contaminated and contaminated sites.

ROMANIA

Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)

Written comments

Romania welcomes the Commission's draft proposal of the *Directive on soil monitoring and resilience*¹ which is a legislative step that follows the European Green Deal, the EU Biodiversity Strategy for 2030 and the New EU Soil Strategy for 2030.

From the initial examination of the text², several aspects and questions have been identified for which we seek clarification from the Commission and on which we would like to further discuss.

General and specific aspects

1. According to Article 1, the Directive applies to all soils in the territory of the MS. However, there are areas that have been declared natural protected areas due to specific ecological conditions (peatlands, marshes, salt marshes) where certain plants grow especially because the soils have certain characteristics that would classify them as unhealthy from the perspective of the Directive. *Romania would like to know the Commission's opinion on the applicability of the directive for forest soils and for soils in natural protected areas.*

2. There are definitions such as: "sustainable soil management", "soil management practices" or "managed soils" which are not clear, may create confusions and raises interpretation and application problems which may affect the implementation directive in a coherent and unified manner. As the definition of the soil management practices does not differentiate between practices with a positive impact on soil health and those with a negative impact, *we would like to know the Commission's view on how to apply the*

¹ The purpose of the Proposal directive, as stated both in the explanatory statement and in the content of Art.1 is to establish a solid and coherent soil monitoring framework for all soils throughout the EU and to continuously improve soil health in the Union healthy soils being essentials for farmers and the agronomic ecosystem in general.

Maintaining or increasing soil fertility in the long term, contributes, on the one hand to achieving a stable or even increased productivity of crops, animal feed and biomass needed for the non-food sectors of the bioeconomy.

² The Draft directive is structured on two main sections, a first section that addresses soils from the perspective of the role they have for agriculture (art. 4-11) and a section dedicated to contaminated sites, the identification, investigation and assessment of the risks associated with them (Art. 12-16).

definition of 'managed soils' which means soils that are subject to soil management practices.

3. The Directive does not address contaminated sites whose contamination comes from diffuse sources. *If a contamination is confirmed, but the source of contamination cannot be identified (it is what is called "diffuse pollution"), how could be declared contaminated site? What is the Commission approach on contaminated sites from diffuse sources?*

4. The definition of contaminated site is correlated with the definition of soil contamination which refers only to chemical contamination. *What is the Commission approach on the biological contamination?*

5. In Article 3.12 "Land" is defined as the surface of the Earth that is not covered by water. *Where do the river meadows fall as it is known that during the spring time, when the snow melts, in conjunction with the spring rains, they are flooded and covered by water and this phenomenon repeats almost every year? Are subject to this definition the lands which are temporarily covered by water as a result of multi-annual climatic and water cycles?*

We request *clarifications on temporary waterlogging situations* (e.g., the situations existing in the Danube meadow for several months of the year) and, as a consequence, *the correct use and monitoring practices in these exceptional situations.*

6. *How the Proposal correlates with the Waste Framework Directive and with the waste legislation and especially to Decision no. 955/2014 on the list of waste, that assigns a waste code to the soil excavated from contaminated sites? In the Commission's opinion, the regeneration as defined in art 3 (22) is a recycling operation?*

7. Definitions of regeneration and soil remediation can create confusion and further implementation difficulties because regeneration aims to achieve a good soil health, while remediation is defined as regeneration that reduces, isolates or immobilizes contaminant concentrations in soil. *How do the soil descriptors apply to a remediated soil that is a regenerated soil which means a soil in a good health, but in which contaminant concentrations are immobilized?*

8. Correlation of soil districts with NUTS 1 may be difficult having in mind that the criteria according to which the soil districts are defined are not similar to those applied to the administrative division.

We ask the Commission to clarify if the parameters considered in Article 4.2 for soil districts have to be fulfilled cumulatively or not?

9. Contaminated sites are identified according to criteria listed in Article 13.2 including any information arising from soil health monitoring, carried out in accordance with Articles 6, 7 and 8. The identification of contaminated sites according to criteria laid down in Article 13.2 (g) is in contradiction with the definition of contaminated site which assumes the existence of a point source. *We ask the Commission to clarify if a land from a soil district for which soil descriptors do not meet the criteria for good soil health mentioned in Article*

7 and Annex I and where no punctual source of contamination is present, is considered contaminated site?

10. We ask the Commission to clarify the application of the polluter pays principle under the conditions of Art. 15.3, 15.4 and 15.5, which bind the competent authorities to take all measures to reduce risks for health and environment.

11. Romania requests the definition of the parameters by which the physical, biological, and chemical health of the soil is defined from the agriculture point of view - and soil management practices - art. 2

12. Should be defined the situations of damage and restoration soil health in cases of major force, in situations of armed conflict or for land used in military exercises.

GREECE

Subject : Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Soil Monitoring and Resilience (Soil Monitoring Law)

comments submitted

1. [file : st11566-ad01.en23-ANNEXES to the proposal for a Directive of the European Parliament and of the Council on Soil Monito.pdf]
 - Article 10 of the *Chapter III , Sustainable soil management*, of the Directive (pag.39)
 - We could propose to add at the end of the 4th sentence of the 1st paragraph as follows:

“1. From (OP: please insert the date = 4 years after date of entry into force of the Directive), Member States shall take at least the following measures, taking into account the type, use and condition of soil:

(a) defining sustainable soil management practices respecting the sustainable soil management principles listed in Annex III to be gradually implemented on all managed soils and, on the basis of the outcome of the soil assessments carried out in accordance with Article 9, regeneration practices to be gradually implemented on the unhealthy soils in the Member States;

(b) defining soil management practices and other practices affecting negatively the soil health to be avoided by soil managers.

When defining the practices and measures referred to in this paragraph, Member States shall take into account the programmes, plans, targets and measures listed in Annex IV as well as the latest existing scientific knowledge including results coming out of the Horizon Europe Mission a Soil Deal for Europe and “EU Missions Ocean, Wares and Soil” inclusive.

We think it is important because this includes also “Nutrient pollution in the landscape-river-sea in the Mediterranean sea basin”

2. [file: st11566-ad01.en23-ANNEXES to the proposal for a Directive of the European Parliament and of the Council on Soil Monito.pdf]

ANNEX I

SOIL DESCRIPTORS, CRITERIA FOR HEALTHY SOIL CONDITION, AND LAND TAKE AND SOIL SEALING INDICATORS

We could insert in the text the number of Regulation on nature restoration contained in document COM(2022) 304 as follows:

“- For organic soils: respect targets set for such soils at national level in accordance with Article 4.1, 4.2, 9.4 of Regulation (EU) [2022/0195 \(COD\)](#)

3. [To the “ANNEX IV PROGRAMMES, PLANS, TARGETS AND MEASURES REFERRED TO IN ARTICLE 10” \(pag. 14\)- 1st sentence,](#)

[We could insert in the text the number of Regulation on nature restoration contained in document COM\(2022\) 304 as follows:](#)

- (1) The national restoration plans prepared in accordance with Regulation [2022/0195 \(COD\)](#)
[...]
- (14) The national actions plans adopted in accordance with Article 8 of Regulation [2022/0196 \(COD\)](#)

SWEDEN

Written questions and comments following WPE October 6 on Soil Monitoring Law

Following the call for delegations to send written questions and comments after WPE 6 October 2023 Sweden would like to put forward the following questions and comments on the commission proposal for a directive on Soil Monitoring and Resilience (SML). The questions and comments should be seen as a complement to the questions and comments that were sent by Sweden after WPE 27 July 2023. Sweden is still analysing the proposal and will thus keep a general scrutiny reservation. Also, the government in Sweden has initiated a consultative procedure inviting relevant actors, including public agencies, the private sector, NGO:s etc., to comment on the proposal.

General boundary delineations

- Can the Commission elaborate on the differences between artificial, natural and semi-natural land? Sweden believes that there are examples of land that are difficult to categorize.

Risk based approach

- Sweden would like the Commission to clarify to what extent they have considered the possibility for a risk-based approach rather than strict requirements on monitoring all soils everywhere? In particular, could a risk-based approach be used in situations when no obvious threats to soil health is present?

Sample points and time for recurring sampling

- The Commission have explained that, according to their calculations, one soil sample in an area of four square kilometres would roughly be the correct sampling density. However, this number does not correspond to the estimate of 210 000 sample points in total in the EU, which is the number presented in the IA. With a sample density of one sample in an area of four square kilometres, there would be roughly 100 000 sample points only in Sweden. Therefore, Sweden would like the Commission to clarify their calculations and in particular with regards to the estimate of 210 000 sample points in total and one sample point in every four square kilometre respectively.
- Sweden would like a clarification on at what soil depth the sampling should be done. Has the factor soil depth been considered in the impact assessment, that is, to what extent have the costs of sampling been weighted against benefits with different soil depths? Some parameters related to unhealthy soils cannot be detected with too shallow sampling, however the cost of sampling increases with deeper sampling.

- Sweden would like a clarification on how the soil health status from a sample is intended to relate to the soil district. If a soil sample has bad status, for example low organic matter or subsoil compaction in the topsoil, would the whole soil district then be classified as unhealthy? Sweden would like to highlight its special conditions with few direct national borders towards other Member States and that our most common soil type is glacial till and peat bogs, which is not transported with air and water. Transboundary effects would therefore be of less importance. In this regard, Sweden would like to point out the different circumstances between Member States and the need for flexibility and possibilities for differentiation in terms of scale, methods and number of samples. Sweden would like a clarification regarding the monitoring's possible effect in regard to property and business confidentiality, and possible consequences of disclosure of the data for individual property owners, both from an economic perspective and from a legal perspective.
- Many descriptors take years to improve and the five-year interval for sampling may be too short to see any result, especially for forest ecosystems where even the forestry has a very long rotation time of several decenniums. It is also of interest to know when in the production cycle, e.g., after harvesting, soil preparation, planting, during growth and thinning, sampling should be carried out. To extend the interval would be a way to reduce the cost and the administrative burden.

Soil descriptors and health criteria for forest ecosystems

- The proposed soil descriptors and soil health criteria is more relevant for soils in agricultural land areas in comparison with soils in for example forest ecosystems or non-manipulated ecosystems. Some descriptors are not relevant for soils in for example boreal forest ecosystems or alpine environments at all. Thus, Sweden would like to see more flexibility in the proposal so that it would be possible to choose certain descriptors depending on what type of soil is being sampled. Such a possibility would make the proposal more relevant for soils in Sweden. The current proposal does partly lead to sampling and assessments of irrelevant parameters, which is neither appropriate nor cost-efficient.

One out all out-principle

- Sweden is hesitant with regards to the *one out all out*-principle which is applied in the proposal. Methodologies for assessing soil health status ought to be much more flexible and incorporate circumstances which are relevant for the specific sampling spot.

Assessment of ecosystem services

- Sweden would like the Commission to clarify how the risk of loss of ecosystem services should be assessed? *Art 9.3: Member States shall analyse the values for the soil descriptors listed in part C of Annex I and assess whether there is a critical loss of ecosystem services, taking into account the relevant data and available scientific knowledge.* Will the Commission

provide guidance on how to carry out this assessment? How will the Commission ensure that the guidance ensures equivalent assessments throughout the EU?

Exemptions due to high naturally occurring background concentrations and diffuse deposition

- Sweden stills seeks clarification on whether exemptions from the soil health assessments will be made for naturally occurring high concentrations of substances when setting the intervals for these parameters. Exemption of such areas are mentioned in the impact assessment, but not in Annex I to the proposal. SE considers this matter to be of high importance since there is a risk that large areas of soil are classified as unhealthy where in fact natural conditions are the cause. For example, in Sweden there are large areas with naturally high occurrences of lead and arsenic. This may complicate soil health assessment, assessments of contaminated sites as well as land development. This applies also to diffuse deposition of airborne substances, which partly originates from other countries, especially in forest soils. Such diffuse deposition is to an extent a “historical debt” from the industries throughout northern Europe, as well as from the Chernobyl disaster.

Exemptions for military use

Sweden still sees a risk that the proposal may prevent the expansion of total defence. SE therefore sees a need for both exemption of military areas used for military defence (training and exercise areas) and exemption for the military and civil defence areas from soil districts and soil monitoring requirements. The proposal contains several articles stating that public access to data on soil health and contaminated sites will be required. This includes data (national data as well as data collected by European agencies) to be included in the EEA soil portal, and data included in the registry for contaminated sites. These requirements mean that military areas need to be exempted from the monitoring requirements, as such data cannot be made publicly available.

Soil health certificate

- Sweden is hesitant about the soil health certification for forest- and agricultural land and the added value it may give. The function of the soil health certificate has been changed since the impact assessment but there are no new analyses on the current proposal, including the cost for setting up and operating such a system. It is not possible to use the proposed sample density to say anything about the soil health for specific properties or landowners.
- Sweden is also questioning the idea of firstly introducing a voluntary system but also giving the Commissions the rights to harmonize the system for soil health certificates. Sweden sees a risk that this will increase the administrative burden and costs for MS.

- Sweden would also like the Commission to explain if the soil health certification system is supposed to be harmonized with the CRCF regulation and if so how this should be done.

Land take mitigation principles

- Sweden would like the Commission to clarify how the balancing of requirements* in Article 11 (a) and (b) should be interpreted?

*11 (a): “as much as technically och economically possible”, 11 (a) (i): “to the extent possible”, 11 (b): “as much as possible”

- Sweden would like the Commission to clarify what type of land exploitation should be regarded as “land take”. Can the Commission clarify how the land take of essential societal activities related to the green transition should be weighed against soil health? Reference is made to for example CRMA and NZIA.

Contaminated sites

- Sweden would like the Commission to explain how potentially contaminated sites should be handled if they turn out *not* to be contaminated? According to para 43 in the preamble “*Soil investigation may prove that a potentially contaminated site is in fact not contaminated. In that case, the site should no longer be labelled by the Member State as potentially contaminated, unless contamination is suspected based on new evidence*”. How should these sites be handled with regards to the register, should they be completely taken out of the register (article 16)?
- Sweden would like the Commission to explain how risk reducing measures (contaminated sites) relates to the concept of soil health. Several of the methods in Annex V does not aim to lower the concentration of contaminants or increase the soil health. They merely address risks for human health and contamination of other mediums such as groundwater, surface water or air.
- Sweden would like the Commission to clarify to what extent the risk-based approach allows for some form of sequencing, for instance that the sampling of the most urgent cases of contaminated areas are prioritized over lower risk cases?
- Within the risk-based approach, have the Commission elaborated on the costs versus benefits with soil investigation for potential contaminated sites? Sweden sees that the investigation of all potentially contaminated sites might cause a risk of potential lack of resources for necessary actions to remediate the contaminate sites.
- With reference to below articles:

15.3 For each contaminated site identified pursuant to Article 14 or by any other means, the responsible competent authority shall carry out a site-specific assessment for the current and planned land uses to determine whether the contaminated site poses unacceptable risks for human health or the environment.

15.4 On the basis of the outcome of the assessment referred to in paragraph 3, the responsible competent authority shall take the appropriate measures to bring the risks to an acceptable level for human health and the environment ('risk reduction measures').

Sweden would like to point out that strictly interpreted these articles could be understood in a way that the polluter pays principle should *not* be applied, and that requirements should be put on national agencies to carry out risk assessments and other measures. Sweden would not agree with this division of requirements and responsibilities.

Poland's preliminary comments
on the draft directive of the European Parliament and of the Council on Soil Monitoring and Resilience (soil monitoring law) COM(2023) 416

1. Method of determining soil districts as the basic units of soil management.

According to the draft directive, **soil districts** should constitute the basic management units for the purposes of soil monitoring and introducing sustainable soil management practices.

The draft directive specifies how Member States should establish soil districts based on the indicated parameters.

Due to the geological and climatic conditions of our country, striving for uniformity within each soil district when determining them on the territory of the country may cause a lot of problems, because such a feature as soil type is not uniform over large areas in Poland. This situation is the result of the activity of glaciers in our areas in the past. The draft directive assumes that establishing of soil districts should be based on the map of soil types compliant with the World Reference Base for Soil Resources. Within each soil type, the heterogeneity of the factors listed in the directive should be assessed.

Maximum flexibility in the method of determining soil districts should be sought to take into account regional and local specificities. Experts in Poland indicate that this task can be approached in different ways, taking into account, to a greater or lesser extent: the geographical and natural conditions or the administrative territorial division of the country. The question arises what is the sufficient level of homogeneity of the designated soil district, taking into account soil type, climatic conditions, environmental zone and land use or land cover. Soils in Poland are characterized by a high diversity of types per unit area.

In Poland's opinion it would be extremely helpful to Member States if the European Commission, with the participation of experts from the scientific community, present the correct way to establish soil districts throughout territory of a given Member State [Article 4(1)], taking into account the indicated parameters [Article 4(2)]. It would be beneficial to present several variants of dividing territory to soil districts, using examples of at least two countries differing in terms of area, population and the indicated parameters. The presentation could be showed on an online working meeting.

2. Authorities competent for carrying out the obligations set out in the Directive.

"Art. 5. Member States shall designate the competent authorities responsible at an appropriate level for carrying out the duties laid down in this Directive. Member States shall designate one competent authority for each soil district established in accordance with Article 4."

This provision should be constructed in a way that gives Member States the opportunity to freely determine the competences of the competent authorities.

Proposed wording of Art. 5:

"Art. 5. Member States shall designate the competent authorities responsible for implementing the obligations set out in the Directive. Member States designate:

- 1) one central authority responsible for monitoring and assessing the condition of soil in all soil districts or one authority responsible for monitoring and assessing the condition of soil for each soil district,*
- 2) one authority for each soil district responsible for implementing the principles of sustainable management of soils and competent for contaminated areas."*

In some cases, monitoring by one, central authority can guarantee better quality of the results obtained and a reliable assessment of soil health throughout the country, in all soil districts. This solution will also ensure better communication at the international level. The dispersion of competences regarding the implementation of monitoring (establishing one competent authority for each soil district), will require very detailed regulation of the rules for determining sampling points, the method of sampling and analytical methods.

3. Method to assess soil health.

Member States shall assess soil health in all soil districts on the basis of monitoring data for each of the soil descriptors referred to in Parts A and B of Annex I and shall analyze the values of the indicators listed in Parts C and D of Annex I, assessing the impact on ecosystem services. The proposed rule assumes that exceeding one criterion of soil condition from Annex I, parts A and B, results in the soil being considered unhealthy. The soil is considered healthy if the criteria for all indicators are met [Article 9(2)] which, in our opinion, is too far-reaching solution.

It requires clarification whether the exceedance concerns the indicator in one measurement point or in a proportionally significant part of measurement points in a given soil district. In our opinion it is not justified to determine based only on exceeded one parameter, while maintaining the ecosystem functions of the soil, that the soil is unhealthy. The relationship between the adopted method of assessing soil health and the more flexible approach adopted for point pollution based on the assessment of risk to human health and the state of the environment also requires clarification. It also requires a deeper analysis whether it is necessary to study all parameters for assessing soil health on land with different types of use (the same set of parameters on agricultural, forest, urban and industrial land).

It seems doubtful that exceeding one criterion would determine whether the soil is healthy or unhealthy ("one out all out"). This approach is too strict. It should be emphasized that it could not reflect the real state of the soil in terms of its natural features and role in the ecosystem. Efforts should be made to develop another, more flexible solution in this respect.

Quantifying the criteria could make these requirements more flexible. For the purposes of assessing the health of soils in their country, Member States would evaluate the examined criteria and assign them a specific weight. Perhaps it would also be appropriate to introduce a different weight for each criterion depending on how the soil is used, and an assessment should be made based on the sum of these indicators to classify the soil as healthy or unhealthy. At the stage of work on individual articles and annexes of the draft directive regarding the criteria for healthy soil condition, we will submit detailed comments in this regard.

4. Obligation of Member States to establish a soil health certification system, voluntary for land owners and managers.

An obligation for Member States to establish a voluntary soil health certification mechanism, proposed in Article 9 section 5, is incomprehensible. It is not clear how such a certificate would function. Certification systems - in order to fulfill their role - must result in benefits for the person undergoing certification. There must be demand for such certificates, but the directive does not indicate who would potentially be interested in purchasing such a certificate. Recital 28 states that healthy soil certification is intended to complement carbon dioxide removal certification, but it is not clear how. We should also remember about the quite wide range of certification systems already available, e.g. for farmers, which assume the use of sustainable agricultural practices that are beneficial for the soil, including: certification under organic farming, certification under integrated plant production (national system), and in the

future, certification on CO₂ removal. Therefore, it is a good idea to leave it to the Member State to decide whether to implement a soil health certification system depending on the analysis of its internal needs.

Proposed amendment to Article 9(5):

*"Art. 9(5): Member States ~~shall~~ **might** set up a mechanism for a voluntary soil health certification for land owners and managers pursuant to the conditions in paragraph 2 of this Article."*

5. Identification and remediation of contaminated sites.

The proposed regulations on the identification, investigation and management of contaminated sites do not include a division between historical pollution and present land damages. Consistency of the proposed provisions with Directive 2004/35/EC¹ should be ensured. New EU rules should not duplicate existing regulations on environmental damage.

If soil contamination constitutes land damage covered by the environmental liability directive, we propose adding an exemption as follows:

"Where soil pollution constitutes land damage covered by Directive 2004/35/EC, the provisions of this directive apply."

If the proposed regulations on contamination cover both environmental damage in land covered by environmental liability directive and historical pollution that occurred before the entry into force of the provisions of environmental liability directive, not covered by this directive, the proposed provisions overlap with the provisions of the environmental liability directive.

In addition, it needs to be clarified how, based on the proposal, should be treated diffuse pollution (exceeded concentrations of hazardous substances from unknown sources) identified in soil health monitoring (Article 6). We have doubts whether in case of detection of soil contamination on a plot as part of soil health monitoring conducted in line with Article 6:

- we apply the procedures referred to in Art. 12 – 16, i.e. the same as in the case of contaminated sites identified on the basis of industrial activities,
- we treat these polluted places differently and how.

6. Financing.

According to Article 17 the implementation of the future directive shall be supported by existing Union financial programs. At the stage of work on individual articles of the draft directive, we will submit detailed comments on financing. We need to emphasize that especially soil monitoring requires long-term, permanent and stable additional support.

¹ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56)

FINLAND

Comments and questions on Soil Monitoring Law after Working Party on the Environment 6th October

- Finland is still in a process of finalizing the position, comments are preliminary at this stage.
- We'd like to thank the Commission for all the hard work in preparing the proposal for the Soil Monitoring Law and for the presentation and responses to Member State's questions.

General comments:

- The proposal should focus on addressing the cross-border effects of soil degradation, securing equal conditions at internal market and promoting policy coherence. In general we are positive towards the aim for achieving healthy soils by 2050. We also think that it is important to develop knowledge base on soils and improve soil health.
- It is important to avoid disproportionate costs and administrative burden when setting up monitoring framework and provide enough flexibility for the Member States in the implementation. Monitoring needs to build on existing monitoring systems in the Member States.
- There are also some areas where further information is needed, for example soil health certificate (referred to in article 9 (5)) and links with other proposals like nature restoration and carbon certification.

Definitions (article 3):

- It is important to ensure consistency with definitions already included into the existing EU legislation as well as in the international guidance.

Soil district (article 4):

- We would like to better understand the concept of "soil district" in article 4.

Soil health and soil monitoring framework (articles 6,7,8,9 and annexes I – III)

- Soil characteristics can have a lot of variability between Member States and within each Member State. It is important that the indicators reflect these differences.
- We will come back with details regarding indicators in Annex I and methodologies in Annex II later, but at this stage couple of initial reflections:
 - It is important to clarify how current methods on sampling and measuring in the Member States are taken into account. For example, we have different methodology for measuring phosphorus than what is included in the proposal.
 - methods for determination of sampling points is an important element and definitions should have flexibility to facilitate practical and cost efficient implementation, and the use of existing programs in the Member States.

- Our experts have also pointed out that the proposed indicators are more suitable to agricultural soils than forest soils.
- We would also like to understand better the how the indicators would be used in built up areas.
- We would like to ask Commission to clarify the “one out of all” approach and basis for this proposal. We have reservation towards defining healthy soil based only on that criteria, because of its implementability in practice taking into account variability of soils.
- We have reservations towards delegated acts in annexes II (Article 8) and III (Article 10).

Soil health certificate (article 9(5)):

- Our position has been that implementing any kind of certification schemes on soil health should be voluntary for the Member States.

Access to justice (article 22)

- Regarding access to justice we would like to have clarification on its relation to the Århus convention
- We also would like to have clarification on the scope of the article, for example what are the acts and omissions of the competent authorities that are meant?

Penalties (article 23):

- Regarding penalties in article 23, the proposed approach differs from our national legislation and we have reservation. There is a need to take into account existing national legislation and ensure consistency with other environmental legislation, and we see here need for adjustments.

CZECH REPUBLIC

Comments on the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law) – updated based on WP held on 6 October 2023

13 October 2023

For the Czech Republic, soil protection is a priority and therefore, overall, it welcomes any initiative to promote soil health including this proposal for a directive that represents an ambitious way to compensate for the long-standing unequal and unsystematic approach to soil protection.

However, the proposed text contains aspects that need to be further discussed / clarified see comments below. The Czech Republic reserves the right to further amend these comments and add further questions.

Main comments:

Scope of the directive

Under Article 2, the directive is supposed to apply to all soils in the territory of Member States. Similar result arises from definitions of “soil” combined with definition of “land”, which is defined as follows – “*land* means the surface of the Earth that is not covered by water.” Therefore, soil health is supposed to be monitored (Article 6(2)) in case of all soils under the surface of the Earth except for the surface that is covered by water.

Such a scope also applies to soils under the land that has already been object to land take, including the land with sealed soil. However, we do not agree that the soil health monitoring obligation should also apply to sealed soils. The reasons for exclusion of sealed soils from monitoring of soil health are following:

- The objective of the directive proposal is to achieve healthy soils by 2050 so that the soil can supply multiple ecosystem services. However, sealed soil lacks basic ecosystem value and supplies no or very little ecosystem services, as stated in communication "EU Soil Strategy for 2030" (COM (2021) 699 final) of 17 November 2021 (sub-chapter 3.2.2). Therefore, the health of sealed soil is of (almost) no relevance with regard to meeting the objective under Article 1.
- Measurement of soil health in sense of Article 8(2) in case of sealed soil, as well as implementation of regeneration practices on unhealthy soils that are sealed, would be (with regard to current state of technological progress) difficult to realize, if not impossible.

We understand that land with sealed soil cannot be excluded from the definition of “land” in view of “artificial land” definition, nevertheless we believe that once the definition of “soil sealing” is included into Article 3 (see the comment below), Article 4(1) could be modified in the way that soil districts are not established on the land with sealed soil. As a result, the obligation to monitor soil health and land take (which, by definition, cannot happen on land with sealed soil, because such land has already been taken) under Article 6(2) would not apply to land with sealed soil.

In case that aforementioned proposition would be found inappropriate, we propose that land with sealed soil to be included into soil districts, however as a separate district. Then Article 6(2) could state that soil health and land take shall be monitored in each soil district, nevertheless for the purposes of monitoring of soil health the district containing land with sealed soil would be excluded. That would probably have an impact into minimal number of soil districts under Article 4(1), that would newly have to be calculated as follows: number of NUTS 1 + 1.

Follow up to WP on 6 October 2023: The Commission acknowledged that sealed soil should be monitored only for the purposes of land take and soil sealing. It suggested maintaining the general approach expressed by Article 2 and nominal monitoring of soil health of sealed soils; at the same time, it referred to Article 8(1) under which Member States determine sampling points for the soil health monitoring. We disagree to avoid sealed soils while choosing location of sampling points, because this would give misleading results (fiction of healthy sealed soils de facto). In our opinion it would be clearer and more objective to exclude sealed soils from soil health monitoring (but not from land take and soil sealing monitoring).

Emphasis on flexibility and subsidiarity – soil descriptors

We understand Article 9(1) in the way that the soil health is determined by values of soil descriptors under Part A and B of Annex I. In case that one single value of these soil descriptors is not met, soil is considered unhealthy under Article 9(2) – so called “one out – all out” principle.

Firstly, the Czech Republic does not consider the “one out - all out” principle appropriate, as it represents a legal fiction (and a strict one) rather than an objective assessment of soil health.

Follow up to WP on 6 October 2023: The Commission stated that the soil descriptors mentioned in Part A and B are crucial for determination of soil health and that once values of these descriptor are overcome, soils start to lose its ecosystem services and are therefore unhealthy. Nevertheless, this approach overlooks that loss of ecosystem services due to overcoming of descriptor values may be different descriptor-by-descriptor, and at the same time it does not take into account improvements made in terms of soil health (e.g. that compared to last measurement when 6/7 of relevant descriptors were not met, it is nowadays only 2/7). That is the reason why traffic light system proposed by other Member States seems to be much more appropriate.

Secondly, the Czech Republic is of the opinion that the monitoring of some soil descriptors enumerated in Part A and B of Annex I (e.g. electrical conductivity to determine salinization) may represent an excessive administrative and financial burden for Member States. For this reason, the Czech Republic proposes to examine whether all soil descriptors enumerated in Part A and B of Annex I are necessary to determine soil health and whether their monitoring is proportionate to the objective of the directive.

Similarly to paragraph above, the Czech Republic proposes to examine whether it is necessary to monitor the descriptors enumerated in Part A and B of Annex I in case of all soil types, among which there is a great variability in terms of soil degradation aspects (e.g. forest soils in the Czech Republic are not threatened by soil salinization or soil erosion). Targeting the soil descriptors to specific soil types would result in significant cost savings.

Finally, the Czech Republic proposes that the values of soil descriptors under Part A of Annex I be set at national level (instead of EU level), since values of these soil descriptors are supposed to reflect specific characteristics of the territory concerned, including soil and climatic conditions, existing agricultural conditions, farming practices, size and structure of undertakings, land use and other specifics. We are aware that “EU Soil Strategy for 2030” states: “*While there is a big variety in the EU, soils also present a set of common characteristics. This makes it possible to define common ranges or thresholds beyond which soils cannot be considered healthy anymore.*” However we would like to put emphasis on wording “common ranges or thresholds” which, in our opinion, does not imply setting of strict values that cannot be exceeded. We are convinced that the approach proposed by the Czech Republic is fully compliant with subsidiarity principle and in addition to that it softens the eventual harshness of “one out – all out” principle.

Emphasis on flexibility and subsidiarity – monitoring of soil health

The Czech Republic prefers to make maximum use of monitoring systems already existing at national level (monitoring of agricultural land and forest land) instead of introducing new systems. It hopes that implementing act under Article 6(8) will give Member States enough flexibility to do so.

Moreover, the Czech Republic suggests considering the fact that different soil types have different dynamics of development (e.g. characteristics of forest soils have a high inertia, and therefore the measurement of soil health every 5 years seems, in this case, unnecessarily frequent). For this reason, it would be appropriate and cost-effective to differentiate the measurement period under Article 8(5) according to the different soil types.

Follow up to WP on 6 October 2023: The Commission argued that by setting frequency of soil health measurement to 5 years for all monitored descriptors in case of all types of soils it was seeking simplicity of a common approach. Commission agrees that characteristics of some soils are relatively stable in time, however they may degrade rapidly. The Czech Republic does not agree with the given explication and asks for examples when characteristics of forest soils rapidly degrade (except for situation when trees covering forest soils are cut down).

Soil erosion

The Czech Republic strongly disagrees with determination of the permissible soil erosion rate at 2 t/ha/year.

The value of 2 t/ha/year is evidently based on the map of agricultural areas in Europe under erosion risk. This map is in stark contrast to more detailed maps of current soil loss made at national level, which were processed using locally adjusted methods and based on the most locally up-to-date input data. Although the map is useful when comparing the intensity of erosion between individual regions, it is completely misleading on a national scale. As for chosen methodology, the Czech Republic sees as problematic the inclusion of all relevant erosion processes, such as erosion by water, wind, harvest and tillage, especially if this assessment were to be carried out within the Czech Republic as a whole.

The Czech Republic further objects that it is not clear for which land type the value of the soil erosion rate is intended (if all soil districts are to meet the given value, or if it is an average value for the entire Czech Republic). With regard to the text mentioned above, it is impossible to assess what effects the given value of the soil descriptor could have e.g. on agricultural

production. The Czech Republic therefore calls on the Commission to determine the exact calculation methodology, especially with regard to the input data.

Follow up to WP on 6 October 2023: The Commission concluded that any value above 2 t/ha/year was not sustainable, although it did not consider geographical specifics of individual Member States and feasibility of meeting the aforementioned value on all the territory of Member States. Furthermore, the Commission introduced a notion that in event that the measurement reveals that value of 2t/ha/year was overcome, a fiction of meeting the value may apply in case that appropriate measures to limit the level of soil erosion are being taken. Originally, we supposed that the general approach towards soil health measurement was that the value of a soil descriptor was either met or it was not and that there was nothing in between. Should this “meeting of descriptor value by fiction” also apply to other soil descriptors in Part A and B of Annex I? What part of the directive proposal is this fiction based on?

Definition of “soil sealing”

The term “soil sealing“ is used extensively in the text of the directive proposal, often side by side with the term “land take”. But unlike “land take”, the term “soil sealing” is not defined in Article 3 and it is not entirely clear to what extent it differs. The general understanding of the term “soil sealing” is following – a form of land take where the surface is covered with impermeable material (mostly for the purpose of construction and infrastructure). We believe that Article 3(16) would have to be modified if the definition of “soil sealing” were included into Article 3.

Land takes issue

The Czech Republic perceives the unbalanced nature of the directive proposal. On the one hand, the proposal contains a very extensive regulation of soil quality protection, which goes far beyond the existing national regulation. On the other, the issue of area-based soil protection (against land takes and soil sealing) is dealt with in a single provision, even though land take is probably the highest form of soil degradation, which in some cases (especially in the case of soil sealing) results in the permanent loss of soil productive and non-productive functions.

The Czech Republic notes that the directive proposal has largely abandoned the implementation of the EU Soil Strategy for 2030, as regards the objectives of area-based soil protection or certain principles expressed there. The directive proposal does not include the objective to achieve no net land take by 2050, although the EU Soil Strategy for 2030 explicitly mentions it in Chapter 2 and stipulates that the future legislative proposal will enable this objective. Likewise, the Czech Republic assumes that the EU Soil Strategy for 2030 in the extent of land take hierarchy was not fully reflected in Article 11.

For that reason, the Czech Republic proposes following modifications:

“Article 1

Objective and Subject matter

1. *The objective of the Directive is to put in place a solid and coherent soil monitoring framework for all soils across the EU and to continuously improve soil health in the Union with the view to achieve healthy soils by 2050 and maintain soils in healthy condition, so that they can supply multiple ecosystem services at a scale sufficient to meet environmental, societal and economic needs, prevent and mitigate the impacts*

of climate change and biodiversity loss, increase the resilience against natural disasters and for food security and that soil contamination is reduced to levels no longer considered harmful to human health and the environment. **The Directive also establishes a framework for achieving the objective of no net land take by 2050.**

2. This Directive lays down measures on:

- (a) monitoring and assessment of soil health;
- (b) sustainable soil management;
- (c) contaminated sites.”

“Article 11

Land take mitigation principles

Member States shall ensure that the following principles **of land take hierarchy** are respected **in case of land take**:

- (aa) **avoid land take and soil sealing as much as possible and preferably use land with sealed soil;**
- (a) avoid or reduce as much as ~~technically and economically~~ possible the loss of the capacity of the soil to provide multiple ecosystem services, including food production, by:
 - (i) reducing the area affected by the land take ~~to the extent~~ **as much as possible and**
 - (ii) selecting areas where the loss of ecosystem services would be ~~minimized~~ **minimal** and
 - (iii) performing the land take in a way that minimizes the negative impact on soil **and**
 - (iv) **performing the land take in a way that minimizes the negative impact on soil management by soil managers and**
 - (v) **preferring time-limited land take and performing land rehabilitation upon the termination of the land take so that the soil would regain its capacity to provide ecosystem services;**
- (b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services.”

Note: New letter (aa) in Article 11 combines step 1 and 2 of the land take hierarchy presented by EU Soil Strategy for 2030. Term “technically and economically” used in letter (a) unduly weakens the message of the letter (a), and therefore we propose its deletion. We further propose to replace the term “to the extent” in letter (a) point (i) by “as much as possible”, which is much clearer. As for letter (a) point (ii), we propose to replace the term “minimized” with term “minimal”, because it corresponds more to the idea that soil providing less

ecosystem services should be preferentially taken. We admit that newly proposed point (iv) in letter (a) does not arise from EU Soil Strategy for 2030, however we consider this as one of the key principles in area-based soil protection and as a friendly gesture towards soil managers, and this is why we propose to include it into letter (a). Finally, point (v) in letter (a) represents another important principle of area-based soil protection that was derived from the need to reuse excavated soils mentioned in sub-chapter 3.2.1. of EU Soil Strategy for 2030.

In relation to modifications mentioned above, definitions of “reverse land take” and “net land take” would need to be transferred from introductory paragraph in Annex I to Article 3 among other definitions. Furthermore, definition of the term “rehabilitation” would need to be included. We propose the following: *„rehabilitation“ means the treatment of the land in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses.* This definition was derived from the definition contained in Article 3(20) of the Directive 2006/21/EC on the management of waste from extractive industries.

Implementation costs to be minimised

The Czech Republic assumes that in all areas targeted by the directive (in particular the determination of soil districts, soil health and land take monitoring and regeneration practices), it will be possible and desirable to use, develop or build on already established instruments to the maximum extent.

Furthermore, the Czech Republic finds the wording of Article 17 a slightly too vague, that is why it suggests clarification of the provision in terms of extent of financial participation by the EU. Moreover, the Czech Republic proposes to expand the exhaustive list of co-financed activities under Article 17, either by changing the exhaustive list to a demonstrative list, or by inclusion of new institutions, e.g. contaminated sites issue under chapter IV.

Potentially contaminated sites – updated (based on WP held on 6 October 2023)

Article 13(2) letter (a) states that while identifying potentially contaminated sites, Member States shall take into account operation of an active or inactive potentially contaminating risk activity. However, from linguistic point of view, expression “operation of inactive potentially contaminating risk activity” does not make much sense, because such an activity is no longer operated.

Article 13(3) states that all potentially contaminated sites must be identified by 7 years following the entry into force of the directive. We note that due to dynamic nature of industrial sites (new ones are constantly being put into operation), it is possible to identify all potentially contaminated sites only to a certain moment. Therefore, the Czech Republic suggest introducing a certain frequency of potentially contaminated sites monitoring – e.g. in 10years period, because Article 16(3) seems slightly too vague in this matter.

Access to justice – new (following WP held on 6 October 2023)

The conditions set out in Article 22 regarding the access to a review procedure before a court of law or an independent and impartial body established by law in order to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to the directive and any failures to act of the competent authorities, are perceived by the Czech Republic, although being in favour of an open and participatory procedure in general, as borderline in terms of the subsidiarity

principle and too vague. As regards the right to information, we consider the provision to be partly duplicative with the regulation on the right to environmental information (Aarhus Convention).

The Czech Republic therefore proposes to consider more precise wording of Article 22, or eventually its deletion on grounds of redundancy. We refer to the proposal for a regulation of the European Parliament and of the Council on nature restoration where similar provision concerning access to justice (Article 16) has been deleted.

Methodology

The Czech Republic sees major shortcomings in methods enumerated in Annex II, in particular, some of these methods seem to be outdated. The ISO standards referred to include the year of publication, while some of these standards are very old. The Czech Republic proposes that the relevant standard should be referred to without a specific year, and as a result up-to-date version of the standard would apply.

More specifically:

- Soil organic carbon – the Czech Republic proposes to include a method under “EN ISO 17184 Soil quality - Determination of carbon and nitrogen by near-infrared spectrometry (NIRS)” and proposes to report the result as a percentage.
- Extractable phosphorus – the Czech Republic proposes to replace method P-Olsen with the more economical, time-saving and environmentally friendly Mehlich 3 method, with reference to the GLOSOLAN standard operating procedure.
- Concentration of heavy metals in soil – the Czech Republic states that the chosen method (0,43M HNO₃) does not set limit values for concentrations of individual elements, furthermore this method is not intended for the determination of Cr(VI) concentrations.
- Nitrogen in soil – it is essential to consider what are the benefits the monitoring of this indicator. The method set out in Annex II determines the total nitrogen, which testifies about the organic matter content of the soil, not, for example, about excessive fertilisation. It is more appropriate to use the mineral nitrogen content as an indicator of over-fertilisation, but this indicator is highly variable over time and its determination at five-year intervals does not make sense.

Moreover, apart from phosphorus and nitrogen, the contents of the main nutrients are not monitored at all (in terms of excess), although this is an important indicator for forest management. Finally, the Czech Republic does not consider the chosen method (Kjeldahl method) to be environmentally friendly. It should therefore be replaced by the dry combustion method (a recognised elemental analysis according to ISO 13878) or NIRS.

Other comments:

Voluntary soil health certification

Article 9(5) established the institution of voluntary soil health certification. However, this provision does not clearly state which bodies are to carry out this certification or what use the voluntary certification is to have. In addition to that, the aforementioned article does not contain information on how this certification is to be financed (does voluntary soil health certification represent an instrument of TEST YOUR SOIL FOR FREE initiative mentioned

in sub-chapter 4.1. of EU Soil Strategy for 2030?). This is why the Czech Republic proposes to elaborate this article.

Follow up to WP on 6 October 2023: The Commission introduced voluntary soil health certification as a tool that rewards soil managers that manage soils in the way that it is kept in healthy state / improves its characteristics towards healthy state. As presented by the Commission, its purpose is to attract private funding to regeneration of healthy soils, not to hinder transactions. The Commission was mentioning traffic light system in this context and we would appreciate more information in this regard and more generally information related to intended design of soil health certificate. Furthermore, would it be able to use data obtained from measurement of soil health in relation to soil health certification for the purposes of national monitoring of soil health?

Article 9(6) of the directive proposal

The Czech Republic is persuaded that Article 9(6) imposes on Member States an unnecessary administrative burden. Reading Article 6(6) and 6(7), the digital soil health data portal is supposed to contain all the information related to soil health and such information is accessible to general public. For this reason, we suggest deleting Article 9(6).

Transposition period

The Czech Republic has reservations about the length of the transposition period set in Article 25(1). Directive proposal brings the protection of soils to a completely new level, and even though the Czech Republic has already established protection of agricultural and forest lands in terms of soil quality protection and protection against land takes as well as soil monitoring systems, the transposition of the directive would result in reconfiguration of entire system in place. Having regard to the need to perform significant changes in national legislation and strategic plans arising from the Common Agricultural Policy, the transposition period of 2 years seems insufficient and the Czech Republic therefore proposes to extend this period to at least 3 years.

Sustainable soil management principles

The Czech Republic proposes a more flexible wording in Annex III, replacing the word “shall” in the introductory sentence with “may”. This is justified by the fact that principles in Annex III are mostly aiming at the management of agricultural land, but these are much less applicable to the management of forest land, which vary significantly across the EU. In addition, the Czech Republic proposes replacing the word “avoid” in the letter (a) in Annex III with “minimize”, because it would be very difficult in the context of the Czech Republic to achieve the state that soils are not without vegetation cover at any point throughout their management. Last but not the least, the Czech Republic proposes to harmonize the wording of sustainable soil management principles with wording of established practices in the framework of the Common Agricultural Policy or environmentally-friendly practices used in case of labelled interventions.

Synergies with other legislation

In view of the legislation being adopted at the EU level, the Czech Republic needs to clarify synergies between the directive proposal, proposal for a regulation of the European parliament and of the Council establishing a Union certification framework for carbon removals, proposal for a regulation of the European parliament and of the Council on nature restoration, and the revision of the directive (EU) 2018/2001 (as far as renewables acceleration area is concerned).

Moreover the Czech Republic needs a clarification of whether the soil descriptor “loss of soil organic carbon“ is interlinked with the Regulation (EU) 2018/841 of the European Parliament and of the Council.



DENMARK

Proposal for a Directive on Soil Monitoring and Resilience (Soil Monitoring Law) Written comments and proposals following the WPE-meeting on October 9th 2023

Denmark welcomes the proposal and supports the overall objective of strengthening soil health in the EU linked to important issues of food security, biodiversity, public health, and resilience against climate change. We are in the early stages of analyzing the implications the proposal and how it corresponds with current monitoring efforts. However, we are aware of the potential costs related to for example establishing a monitoring system, establishing soil districts, and remediation soil contamination within a fixed timeframe.

In this regard, we think it is important to make sure the proposal is and remains compatible with other relevant EU proposals currently under negotiation. We also find it important that the proposal for monitoring is properly aimed at targeting areas with the most potential and actual possibilities for improving soil health and thereby achieving the main goal of healthy soils in 2050. We look forward to the coming negotiations.

Denmark thanks the Commission for addressing the comments and questions that we had submitted through the Presidency as a follow-up to the initial presentation of the proposal in the WPE on July 27th. We are pleased to have the opportunity to submit additional, general comments.

Soil districts, Chapter 1, Article 4 (1-2)

Denmark along with a number of other member states has flagged that a key issue for clarification will be soil districts and their impact on the potential administrative burden linked to soil sampling.

While the minimum number of soil districts shall correspond to the number of NUTS1, member states shall also seek homogeneity on four parameters including soil type within each soil district that can vary substantially within geographical areas.

Due to the variety in soil types and land use within the Danish territory, we note that the suggested sampling error of 5 percent could result in excessive administrative burdens related to soil sampling. Denmark requests the Commission to elaborate on the purpose of the soil districts and especially how the implementation of soil districts can impact the amount of soil sampling points needed to meet the requirement of a maximum percent error of 5 percent as described in preamble 31 and annex II.

Soil health certification, article 9 (5)

Denmark believes it would be helpful to learn more about the Commission's expectations on how a voluntary soil health certification framework should be established and monitored in coherence with the carbon removal certification.

The Commission's proposal on a regulatory framework for the certification of carbon removals has not yet been adopted. Furthermore, methods and procedures for certification will be established in delegated and implementing acts after the regulation enters into force. Denmark therefore urge the Commission to further describe the purpose and content of the soil health certification in the directive.

Sustainable soil management, Chapter 3, Article 10

In the explanatory memorandum, it is stated that the Commission will carry out an analysis on the need to set more specific requirements to restore/regenerate unhealthy soils based on the progress of

sustainable soil management practices and the advancement of knowledge on the criteria for the descriptors of soil health among other criteria.

Further, it is stated in article 10 (3) and preamble 39, that member states shall regularly assess the effectiveness of sustainable soil management practices.

It is unclear how the effectiveness and progress on sustainable soil management should be assessed as well as the administrative burden for MS. We would like the Commission to elaborate on how MS is expected to evaluate the development of sustainable land-use and soil management practices, and whether the MS will be obliged to carry out a baseline for this parameter before the directive enters into force in order to document the progress on sustainable soil management.

Land take mitigation principles, Chapter 3, Article 11

Denmark believes that it is important that the proposal for a soil health monitoring directive gives a clear added value and that it enables cost-effective implementation with enough flexibility to make national and regional adjustments.

For example, Denmark believes that it is important that the proposal does not impose on the distribution of powers in relation to physical planning and that local self-government and the municipal planning monopoly is respected.

Contaminated sites, Chapter 4, Article 12-16

Diffuse and point-source contamination

Denmark welcomes the requirement for member states to identify, investigate, and manage contaminated sites by establishing a risk-based approach. Denmark already has a well-functioning system for identifying and managing point-source contaminated sites.

However, we urge the Commission to clarify in the proposal the distinction between obligations related to point-source contamination on industrial sites (chapter IV) as opposed to monitoring soil contamination derived from diffuse pollution caused by e.g. transport, transboundary airborne emissions or agricultural spreading of manure or sludge on large areas (chapter II, Annex I).

We suggest that the Commission clarifies that Chapter IV only applies to point-source contamination. Member states are requested to monitor soil contamination in all soils with no exclusions (Annex I, part B), but it is unclear whether monitoring applies to diffuse pollution as well as point-source contamination. This could have substantial consequences for what counts as a contaminated or potentially contaminated site as well as the approach to these areas.

It is also unclear whether the proposal considers naturally high concentrations of chemical substances in some soils, e.g. cadmium or other natural occurring metal, as soil contamination – or if this will be excluded.

Risk-based approach

Denmark welcomes the requirement for member states to establish a risk-based approach to managing contaminated sites. However, we lack clarity on the Commission's frame for identifying contaminated sites as well as guidance on the minimum criteria for identifying contaminated sites. We therefore suggest that the Commission provides guidelines for establishing a risk-based approach to identifying contaminated sites and for the scope of the criteria in article 13 (2, e-g).

We need clarity on whether a risk-based approach for registering and identifying contaminated sites should only include historical soil contamination or also newer soil contamination derived from ongoing polluting activities, where the polluter-pays principle applies in Denmark. We propose that the Commission clarify, whether Member States need to register ongoing polluting activities e.g. activities mentioned in Annex I to Directive 2010/75/EU, which is referred to in chapter IV, article 13.

The remediation of contaminated sites has high administrative burdens, and the Commission is requested to elaborate on how financing possibilities will be made available for MS to advance the task within the proposed timeframe.

LITHUANIA

Comments on the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)

In addition to the comments presented in document WK11669/2023, Lithuania submits additional comments and questions to the Commission.

1. Although it was explained that the Commission will contribute 20% to soil monitoring, the use of CAP funds for the creation and maintenance of the monitoring system is limited. Thus, the need for national funds is increasing. There is also a concern to avoid both financial and administrative burdens on farmers, who are expecting free soil sampling and evaluation as per EU Soil Strategy to 2030.
2. According to Article 15(3) and 15(4) “responsible competent authority shall carry out a site-specific assessment for the current and planned land uses to determine whether the contaminated site poses unacceptable risks for human health or the environment” and “shall take the appropriate measures to bring the risks to an acceptable level for human health and the environment (‘risk reduction measures’).” We would like to ask the Commission whether the competent authority will always be responsible for the site-specific assessment and application of risk reduction measures. We believe that the competent authority must apply the “polluter pays” principle. We agree that it is not always possible to apply this principle, especially in the case of historical pollution. However, we want to understand how the provisions of Articles 15(3) and 15(4) are to be applied where the polluter is known.
3. We propose to clarify in the definition of “soil” in Article 3(1) whether it covers “native rock”. What depth is being referred to?
4. Article 3(5) would require more detailed information or guidance on when soil management practices will start to impair the ecosystem services provided by the soil or become detrimental to other properties of the environment. The emphasis here is on the ecosystem services provided by the soil, but the text and Annex III refer to the principles of soil management.
5. We would be grateful if you could provide examples of land types covered by definitions in Article 3(14) to 3(16). Which type of land does the agricultural land / agricultural soils fall into?
6. We would like to receive a more detailed explanation on Article 4, paragraph 1 of which states that the number of soil districts shall as a minimum correspond to the number of NUTS 1 territorial units, but paragraph 2 states that Member States shall seek homogeneity within each soil district regarding the following parameters: soil type, climatic conditions, environmental zone, land use. NUTS are geographical divisions, however, soil types and other parameters can vary widely across geographic areas. There is also a need for clarification on homogeneity, as the districts are characterised by differences in soil characteristics, types, etc.

7. Even after the explanation given to the Working Party on the Environment, doubts remain regarding Article 5, whether it is necessary to appoint a competent authority for each soil district, as this will increase the administrative burden and financial costs. We consider one competent authority overseeing all the soil districts sufficient. The wording of Article 5 should reflect that as well as now it appears to mean that every soil district needs a separate authority.
8. According to Article 9(2) soil is unhealthy where at least one of the criteria listed in parts A and B of Annex I is not met ('unhealthy soil'). We would like further clarification as to whether a single non-attained descriptor should result in a whole large area being recognized as unhealthy. For example, is the entire soil district considered to be unhealthy if a small area affected by erosion is identified.
9. We would like further clarification on the voluntary soil health certification mechanism provided for in Article 9(5). What added value is expected from such certification? How will this certification system interact with Carbon Removal Certification? Does this certification only apply to agricultural soils? What data will be used for certification? Who will issue the certificates, and will they need to be renewed periodically? Article 9(5) also states that the Commission may adopt implementing acts to harmonise the format of soil health certification. We believe that a clear duty to the Commission („shall adopt“) and the date of adoption of the implementing act must be established here. Otherwise, we may find ourselves in a situation where the MS will set up the certification mechanisms, and after a few years the Commission will adopt an implementing act and the mechanisms will have to be changed.
10. Article 9(6) requires Member States to communicate soil health data and assessment the relevant land owners and land managers upon their request. Will this information be available to the public, land tenants or potential land buyers?
11. Given that after the entry into force of the Directive Member States will have to establish soil districts, monitoring framework, designate competent authorities, the deadline referred to in Article 10(1) is too short.
12. We would be grateful for a more detailed explanation of the compensation referred to in Article 11(b).
13. The electronic reporting to the Commission and to the EEA every 5 years under Article 18(1) is questionable. Firstly, not all soil indicators change so quickly (e.g., organic carbon). Secondly, the purpose of such reporting is unclear, as under Article 18(2) Member States shall ensure that the Commission and the EEA have permanent access to the information and data. What will be the added value of the reports if the Commission has permanent access to data?
14. We have doubts about how it will be ensured that confidential data are not disclosed in the context of the implementation of Article 19.
15. We would be grateful if you could explain in more detail how Member States could ensure that the review procedures referred to in Article 22 are free of charge or not prohibitively expensive.

16. The transposition deadline of the Directive in Article 25 is too short, as it will be necessary to make fundamental changes to national legislation.

