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**LIMITE**

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## **CONTRIBUTION**

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 11566/23 + ADD 1
Subject:	Soil Monitoring Law Directive: Follow up to the WPE on 30 November 2023 – comments from a delegation

Following the above WPE meeting and the call for comments (WK 16161/23 INIT), delegations will find attached comments from Malta.

## MALTA

### Comments on Clusters I, II, III, and IV of the proposed Soil Monitoring and Resilience Directive

#### Overall feedback

MT supports the proposed Directive on Soil Monitoring and Resilience (Soil Monitoring Law), recognizing it as a robust framework for monitoring soil health throughout the EU and aligns with the directive's goal of reducing soil contamination to non-harmful levels for human health and the environment.

MT is the smallest Member State in terms of land area, characterized by the highest population density in the European Union (almost 1,700 inhabitants per km<sup>2</sup>) and the highest tourism intensity. For this reason, Malta is being faced by an acute shortage of available land, intense land management practices, and the coexistence of diverse land uses in close proximity due to the aforementioned demographic and tourism-related pressures. These challenges are further compounded by national agri-climatic and geological characteristics. With this in mind, MT also points out that the implementation of such an ambitious legal framework would be particularly challenging to implement considering the country's particularities, some of which are unique to it.

With the above said, whilst also noting the significant financial and administrative cost, as well as the need for adequate capacity-building to enable implementation, MT advocates for adequate flexibility in the implementation, ensuring a fair and equitable distribution of responsibilities, fostering solidarity among MS and reinforcing the shared commitment to environmental remediation and sustainable development.

#### Recitals

Recital	Comment
1-23, 27	MT appreciates the criteria adaptation approach and notes that it is essential that national agri-climatic, geological and pedological characteristics should be factored in when establishing criteria for “healthy” soils. If not, various EU soils might fall under the category of “unhealthy” soils by nature and not due to any contamination or malpractice.

24	Refer to comment on Article 4
26	Whilst MT agrees with having a minimum common set of measurable criteria for soil monitoring, it is to be emphasised that such an approach should not compromise challenges associated with local specificities.
28	Whilst MT appreciates the scope of setting up a mechanism for a voluntary soil health certification for landowners and managers, it is important to note that such actions will incur a significant financial and administrative cost and will require adequate capacity-building. MT would like to emphasise the need for flexibility in this respect.
32	In relation to MT's comment about Article 6(4), MT would suggest the following rewording of this recital:  <i><b>"If Member States so require, the Commission should assist and support Member States' them in the monitoring of soil health ..."</b></i>
34	In line with the comment made in relation to Article 6(4) the following insertion (in bold) is being suggested:  <i>"That portal should primarily include all the data collected by the Member States and the Commission as required by this Directive. It should also be possible to integrate in the portal, on a voluntary basis, <b>and at the discretion of the Member State in question</b>, other relevant soil data collected by Member States or any other party (and in particular data resulting from projects under Horizon Europe and the Mission 'A Soil Deal for Europe'), provided that those data meet certain requirements as regards format and specifications. Those requirements should be specified by the Commission by way of implementing acts."</i>
35	Whilst MT agrees with having a harmonised system for soil monitoring, it is to be emphasised that such harmonisation will take into account the associated local specificities.
37-42	Refer to comment on Article 7
43, 44	Taking into account the historical and transboundary contamination arising from events and sources which are beyond the control of MS, it is important that MS do not bear the sole burden of remediation and decontamination. This is particularly relevant in sites where the source of contamination is recorded and could be easily referenced through literature. Therefore, MT calls for a fair and equitable distribution of responsibilities, fostering solidarity among MS and reinforcing the shared commitment to environmental remediation and sustainable development.

48	Refer to comment on Article 16.
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## Articles

Article	Topic	Paragraph	Comments
4	Soil districts	2	<p>When establishing the geographic extent of soil districts, it is important to consider that MT is the smallest MS in terms of land area with the highest population density (with almost 1700 inhabitants per km<sup>2</sup>) and the highest tourism intensity in the EU. These national factors mean that land is in very great demand, in very short supply, intensely managed and distinct land uses, and soil types often co-exist in close proximity. In this respect, given that the pressures and threats on soil are similar, irrespective of the soil and land cover heterogeneity, MT would most likely consider having 1 district despite the parameters mentioned in article 4(2) and calls for the following inclusion:</p> <p><i>“When establishing the geographic extent of soil districts, Member States may take into account existing administrative units and shall seek homogeneity within each soil district <b>to the extent possible</b> regarding the following parameters:...”</i></p>
6	Soil health and land take monitoring framework	6(4)	<p>MT remains concerned with the text of Article 6(4) and recommends the following changes (in bold or strikethrough):</p> <p><i>“<b>If Member States so require</b>, <del>the</del> Commission shall, subject to agreement from Member States concerned, carry out regular soil measurements on soil samples taken in-situ, based on the relevant descriptors and methodologies referred to in Articles 7 and 8, to support Member States’ monitoring of soil health. Where a Member State provides agreement in accordance with this paragraph, it shall ensure that the Commission can carry out such in-situ soil sampling.”</i></p> <p>This leaves assistance by CION as a prerogative of the Member State rather than just subject to its agreement.</p>

			Notwithstanding the fact that the overall approach is one, which favours subsidiarity, and following from the comment made in the WPE of 6 <sup>th</sup> November, MT still requires CION's response on how this article ensures that the principle of subsidiarity is respected.
		6(6)	At the WPE of the 30 <sup>th</sup> of November, the Commission commented on Article 19 stating that MS need to make a distinction between the collected data and the data made available to the public, and that it didn't have the intension to publish the exact locations of samples. However, the text of Article 6(6) states that the Commission and the EEA shall establish a digital soil health data portal, that shall provide access in georeferenced spatial format, to amongst others, the data referred to in Article 8(2), i.e. the data on the descriptors in Annex I. MT therefore suggests that the position indicated in the aforementioned WPE is reflected better in the text of this particular Article.
7	Soil descriptors, criteria for healthy soil condition, and land take and soil sealing indicators  (+ Annex I)	Overall and including Annex I	While appreciating the need for tools and criteria to assess soil health, it is essential that national agri-climatic, geological and pedological characteristics are factored in when establishing criteria for "healthy" soils. If not, various EU soils may fall under the category of "unhealthy" soils despite the application of sustainable soil management practices.  Moreover, comment on recitals 43 and 44 applies here.
9	Assessment of the soil health	overall	Comments related to Article 7 also apply here.
		9(2)	Additionally, the wording of Article 9(2) needs to be clearer with regards to the reference to the ' <i>first subparagraph</i> ' or ' <i>subparagraph 1</i> ' within. It is thus recommended that ' <b>subparagraph (a)</b> ' is used instead to ensure a common understanding.
		9(4)	With reference to the comment made on Article 6(6) a clarification would be required on how and what data will be made publicly available.
		9(5)	Tied with the feedback on Article 7, MT further welcomes the proposal that MS shall set up a mechanism for voluntary soil health certification but cautions that the criteria for healthy soil conditions should reflect national agri-climatic and geological characteristics of soil. That said, MT

			calls for the need of flexibility in this respect, as otherwise, such soil health certifications will erroneously suggest soils are “unhealthy”.
10	Sustainable soil management (+Annex III & IV)		<p>MT welcomes the initiative of defining sustainable soil management practices that are beneficial to managed soils and identifying soil management practices which negatively affect soil health. However, the requirements should reflect the national/local conditions and be in keeping with time-tested and culturally important agricultural practices.</p> <p>With reference to the principles listed in Annex III, MT would like to once again call for flexibility, noting that some of the principles suggested might be difficult to integrate in view of the particular national agri-climatic and geological characteristics. An example would be point (a), which suggests: <i>“avoid leaving soil bare by establishing and maintaining vegetative soil cover, especially during environmentally sensitive periods”</i>. In this case, the limited rainfall experienced by MT and the lack of mountains and rivers would make it difficult to maintain vegetative soil cover through sensitive periods, such as the hot-dry summers.</p>
11	Land take mitigation principles		<p>In light of the country’s particularities outlined in the overall comment, MT suggests that "Land within the development zone committed for development" should be considered as a specific land area excluded from the criteria outlined in Annex I. Moreover, an amendment (in bold) can be considered regarding Article 11 as follows:</p> <p><i>‘Member States shall ensure that the following principles are respected in case of land take <b>in areas that have not been statutorily designated for development and/or are covered by an approved development permit, prior to the entry in force of the Directive</b></i></p>
14	Investigation of potentially contaminated sites	14(2) & (3)	MT believes that flexibility is to be allowed in the Directive for MS to be able to implement certain parameters and technicalities according to the country’s specificities.

15	Risk assessment and management of contaminated sites (+ Annexes V & VI)	Overall	<p>It must be ensured that none of the measures penalise farmers unfairly for the consequences of things that are beyond their control, especially referring to cases of historical contamination or originating from outside the boundaries of agricultural land. Thus, Malta believes that a distinction should be made between unavoidable and intentional violations, and also to distinguish between those violations that have a direct effect on human health, and others that do not.</p> <p>MT is concerned about the implications this may have on food consumption and demand for local produce. Moreover, MT is not in favour of having penalties linked with turnover of the legal person or to the income of the natural person having committed the violation, as this would not be as simple, in view of the fact that farmers could have income from other activities apart from farming itself.</p>
16	Register (+ Annex VII)	Overall and including Annex VII	<p>Noting that Malta is small and has a close-knit society, having a georeferenced database with coordinates, address or cadastral parcels might easily compromise the possibility to apply the confidentiality clauses associated with article 4(2)(f) of the Directive 2003/4/EC. It is therefore suggested that flexibility is given with respect to how data is represented on the publicly available register.</p>
19	Information to the public		Refer to comments on Articles 6(6), 9(4) and 16.
23	Penalties		Refer to comment on Article 15