

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) – cluster 4

4 December 2023

In the request for contribution dated 21 November 2023, Presidency invited Member States to send written comments and drafting suggestions related to Clusters 4 by 4 December 2023. The Czech Republic proposes following amendments and related comments; however, the Czech Republic reserves a further scrutiny reservation.

Amendments – cluster 4:

Article 11

“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: We perceive 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. Therefore, we propose the aforementioned modifications.

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.

Furthermore, in view of new letter (v), definition of the term “rehabilitation” would need to be included into the directive proposal. We suggest 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.

Article 17

“Article 17

Union financing

*Given the ~~priority~~**importance of matters regulated herein**~~inherently attached to the establishment of soil monitoring and sustainable management and regeneration of soils~~, the implementation of this Directive shall be supported **at least** by existing Union financial programmes in accordance with their applicable rules and conditions.”*

Alternatively:

*Given the priority inherently attached to the establishment of soil monitoring and sustainable management and regeneration of soils **and contaminated sites**, the implementation of this Directive shall be supported **at least** by existing Union financial programmes in accordance with their applicable rules and conditions.”*

Note: First of all, we propose to change the wording of the article in order to cover all institutions by Union financing. This concerns in particular (potentially) contaminated sites, their investigation and later on, management, which may prove to be an extremely expensive activity. Alternative, the wording of which is narrower, adds the words “contaminated sites” at the end of the list of matters that are going to be supported by Union financial programmes.

At the same time, we propose to allow the use of sources of financing other than existing Union financial programmes, including newly adopted Union financial programmes. We see no reason why Union financing should remain fixed for the future, with no possibility to react to new

challenges related to soil protection. Moreover, it is unclear to what date the term “existing” would apply, and by including “at least” we can overcome this problem.



Article 18(1)

- “1. Member States shall electronically report the following data and information to the Commission and to the EEA every 57 years:
- (a) the data and results of the soil health monitoring and assessment carried out in accordance with Articles 6 to 9;
 - (b) a trend analysis of the soil health for the descriptors listed in parts A, B, and C of Annex I and for the land take and soil sealing indicators listed in part D of Annex I in accordance with Article 9;
 - (c) a summary of the progress on:
 - (i) implementing sustainable soil management principles in accordance with Article 10;
 - (ii) the registration, identification, investigation, and management of contaminated sites in accordance with Articles 12 to 16;
 - (d) the data and information contained in the register referred to in Article 16.
- The first reports shall be submitted by ... (OP: please insert date = 57 years and 6 months after entry into force of the Directive).”

Note: We propose modification of the frequency of reporting to 7 years (or 7 years and 6 months, respectively), so that it would be in line with modifications proposed by the Czech Republic in Article 8(5).

Article 19

“Article 19

Information to the public

- ~~1. Member States shall make public the data generated by the monitoring carried out under Article 8 and the assessment carried out under Article 9 of this Directive accessible to the public, in accordance with the provisions under Article 11 of Directive 2007/2/EC of the European Parliament and of the Council¹ for geographically explicit data and Article 5 of Directive (EU) 2019/1024 for other data.~~
2. The Commission shall ensure that soil health data made accessible through the digital soil health data portal referred to in Article 6 is available to the public in accordance

¹ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

with Regulation (EU) 2018/1725 of the European Parliament and of the Council² and Regulation (EC) No 1367/2006 of the European Parliament and of the Council³.

3. *Member States shall ensure that the information referred to in Article 18 of this Directive is available and accessible to the public in accordance with Directive 2003/4/EC, Directive 2007/2/EC and Directive (EU) 2019/1024 of the Parliament and of the Council⁴.*
- ~~4. *Disclosure of any information required under this Directive may be refused or restricted where the conditions laid down in Article 4 of Directive 2003/4/EC are fulfilled.*~~

Note: We propose deletion of par. 1 for the reason that it duplicates (in substance) par. 3. As Article 18(1) letter (a) indicates, “the data and results of the soil health monitoring and assessment carried out in accordance with Articles 6 to 9” are already covered by par. 3. Likewise, we propose deletion of par. 4 on the grounds of redundancy. The rule contained in par. 4 exists already in the Directive 2003/4/EC and in the Aarhus Convention.

Article 22

“Article 22

Access to justice

~~*Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities.*~~

~~*Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient.*~~

~~*Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary.*~~

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

³ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

⁴ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.”

Note: We perceive 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, as borderline in terms of the subsidiarity principle and too vague (especially the part “*the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive*”).

To our understanding, measurements and assessment of soil health are supposed to be performed by expert entities based on methodology under this directive proposal, hence we do not see the reason why assessment of soil health should fall under review by a court and how exactly a court could review these findings. Finally, we are persuaded that Article 22 unnecessarily duplicates Article 9(3) of the Aarhus Convention, parties of which are all 27 EU Member States and the EU.

For these reasons, we propose deletion of Article 22. Analogically, 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 on similar grounds.

Article 23

“Article 23

Penalties

1. *Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council, Member States shall lay down the rules on penalties applicable to violations by natural and legal persons, of the national provisions adopted pursuant to this Directive and shall ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.*
- ~~2. *The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the violation. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. In the case of a violation committed by a legal person, such fines shall be proportionate to the legal person’s annual turnover in the Member State concerned, taking account, inter alia, the specificities of small and medium-sized enterprises (SMEs).*~~
- ~~3. *Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:*~~
 - ~~(a) *the nature, gravity, and extent of the violation;*~~

~~(b) — the intentional or negligent character of the violation;~~

~~(c) — the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment.~~

4. *Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.”*

Note: As for par. 2 proposed for deletion, Czech system of administrative sanctions in the area of environmental law operates under a different scheme where annual turnover criterion does not enter into calculation of penalties – if implemented, protection of soil would be the only environmental component in Czech environmental law with mechanism of sanctions under Article 23. Furthermore, the criterion itself might be found discriminatory, because it effects only legal persons but not natural persons – entrepreneurs.

As far as par. 3 is concerned, we refer to the statement repeatedly pointed out by Member States and acknowledged by the Commission that the directive proposal imposes no direct obligations to land owners / land managers. Hence, it will be Member States, via transposition of the directive proposal, that will determine constituent elements of violation of individual directive provisions and execute them. At this moment it is unclear what acts by natural / legal persons would be penalized following the Article 23, and therefore it makes no sense to determine in advance to what Member States should give due regard while establishing the penalties. Again, we do not know yet the acts to penalize. This is why we propose deleting par. 3.

Article 25

“Article 25

Transposition

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [OP please insert date = 23 years after date of entry into force of the Directive]. They shall forthwith communicate to the Commission the text of those provisions.*

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. *Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.”*

Note: 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 proposal 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 therefore we propose to extend this period to at least 3 years.

Annex III

“ANNEX III

SUSTAINABLE SOIL MANAGEMENT PRINCIPLES

The following principles shall apply:

- (a) ~~avoid~~ minimise leaving soil bare by establishing and maintaining vegetative soil cover, especially during environmentally sensitive periods;
- (b) minimise physical soil disturbance;
- (c) avoid inputs or release of substances into soil that may harm human health or the environment, or degrade soil health;
- (d) ensure that machinery use is adapted to the strength of the soil, and that the number and frequency of operations on soils are limited so that they do not compromise soil health;
- (e) when fertilization is applied, ensure adaptation to the needs of the plant and trees at the given location and in the given period, and to the condition of soil and prioritize circular solutions that enrich the organic content;
- (f) in case of irrigation, maximise efficiency of irrigation systems and irrigation management and ensure that when recycled wastewater is used, the water quality meets the requirements set out in Annex I of Regulation (EU) 2020/741 of the European Parliament and of the Council⁵ and when water from other sources is used, it does not degrade soil health;
- (g) ensure soil protection by the creation and maintenance of adequate landscape features at the landscape level;⁶
- (h) use site-adapted species in the cultivation of crops, plants or trees where this can prevent soil degradation or contribute to improving soil health, also taking into consideration the adaptation to climate change;
- (i) ensure optimised water levels in organic soils so that the structure and composition of such soils are not negatively affected;⁷

⁵ Regulation (EU) 2020/741 of the European Parliament and of the Council of 25 May 2020 on minimum requirements for water reuse (OJ L 177, 5.6.2020, p. 32).

⁶ This principle does not apply to forest soils

⁷ This principle does not apply to urban soils

- (j) *in the case of crop cultivation, ensure crop rotation and crop diversity, taking into consideration different crop families, root systems, water and nutrient needs, and integrated pest management;*
- (k) *adapt livestock movement and grazing time, taking into consideration animal types and stocking density, so that soil health is not compromised and the soil's capacity to provide forage is not reduced;*
- (l) *in case of known disproportionate loss of one or several functions that substantially reduce the soils capacity to provide ecosystem services, apply targeted measures to regenerate those soil functions. ”*

Note: We propose more flexible wording in Annex III, replacing the word “shall“ in the introductory sentence with “may“, and for three reasons. Firstly, it is in line with wording of Article 10(1) letter (a) “*respecting the sustainable soil management principles listed in Annex III*”. Secondly, a simple appendix should not contain any legal obligations, either for Member States or for third parties – such obligations belong to the core text.

And thirdly, this is justified by the fact that principles in Annex III are mostly aiming at the management of agricultural land (arable land), but these are much less applicable to the management of forest land. We believe that only principles in letters (d), (h) and (l) may be applied to forest soils as explained below:

- letter (a) – bare land practically does not occur in case of forest lands, except for cases of deforestation – to those situations apply national law prescribing reforestation in a given period of time
- letter (b) – physical soil disturbance may affect forest lands only exceptionally, in terms of frequency and area affected (planting of pines)
- letter (c) – herbicides and pesticides are used in forestry in a very limited amount
- letter (e) – fertilizers are used sparingly in forestry, organic fertilizers not at all
- letter (f) – irrigation is not performed in forest lands
- letter (i) – drainage of forest lands is no longer performed
- letter (j) – rotation of species is irrelevant due to longevity of trees
- letter (k) – grazing in forests is forbidden under national law

Generally, we would appreciate a special set of principles dedicated to management of forest soils, and, since the Commission interprets the term “managed soils” in a broad sense and includes into this category parks and gardens as well, for urban soils. We still scrutinize the exact set of principles.

In addition, we propose replacing the word “avoid“ in the letter (a) in Annex III with “minimise”, because it would be very difficult in the context of the Czech Republic to achieve the state that soils under arable lands are not without vegetation cover at any point throughout their management.



NOTE DES AUTORITÉS FRANÇAISES

Objet : Proposition de révision sur la directive Sols - Commentaires écrits des autorités françaises suite au groupe du 30 novembre 2023

Les autorités françaises remercient la Commission pour sa proposition de directive sur les sols et souhaitent faire part des commentaires écrits suivants à la suite du WPE du 30 novembre. Elles **indiquent de nouveau leur soutien à la proposition de directive sur la surveillance et la résilience des sols** portée par la Commission européenne.

Pour le **volet « gestion durable des sols »**, la France met déjà en place un suivi spécifique de l'artificialisation des sols et a initié une trajectoire de réduction de l'artificialisation des sols. A cet égard, il lui apparaît plus adapté de **dissocier le suivi de l'artificialisation des sols de celui du cadre général de « surveillance des sols »**. Ainsi, les autorités françaises soulignent l'importance de bien **distinguer l'objectif de surveillance de la bonne santé des sols non-artificialisés d'une part et la maîtrise de l'artificialisation de l'autre**, pour laquelle elles sont favorables à un dispositif de suivi spécifique, à l'échelle nationale.

Les autorités françaises soulignent le fait que le contenu du chapitre III du projet de directive gagnerait à être amendé pour **mieux préciser le contour des principes d'atténuation de l'artificialisation des sols**.

Concernant la gestion des sols agricoles et forestiers, elles soulignent que la France est favorable à la définition des pratiques de gestion durables, plutôt que la mise en œuvre d'un plan d'action ou de gestion.

Les autorités françaises sollicitent des éclaircissements auprès de la Commission européenne sur les deux points suivant de l'article 10 :

- Ce qu'elle entend au paragraphe 2 (b) par « implementation of holistic soil management concept »
- Sur ce qui serait attendu par l'évaluation régulière de l'efficacité des mesures prévu par le paragraphe 3. ces mesures étant avant tout l'identification des pratiques de gestion durable des sols

Les recommandations listées dans l'annexe III sur les principes de gestion durable des sols sont adaptées principalement aux sols agricoles, même si certaines recommandations peuvent également s'appliquer à d'autres sols et qu'il. Il serait également utile de répertorier les pratiques durables pour les sols non agricoles, notamment pour maintenir la fertilité des sols forestiers. Elle insistera également sur le fait qu'il est essentiel que les pratiques de gestion des sols soient rattachées aux différents contextes pédoclimatiques, par exemple *le principe de « minimiser la*

perturbation physique du sol » ne doit pas pouvoir être interprété comme une interdiction du labour qui peut être nécessaire dans de nombreuses situations.

Par ailleurs pour ce volet, il conviendrait de rappeler que la révision de la directive RED3 (Renewable Energy Directive, révisée par la Directive (UE) 2023/2413 du 18 octobre 2023) statue sur l'obligation de garantir la préservation de la qualité des sols forestiers en s'appuyant sur une liste de plusieurs pratiques de gestion à éviter. Une partie de pratiques impactant négativement les sols forestiers apparaît déjà dans la RED, et que la directive Sols devra nécessairement s'appuyer dessus afin de mettre en pratique l'article 10 de manière cohérente. Cette exigence de cohérence, déjà mentionnée dans le considérant (28) aurait toute sa place dans le considérant (42) qui cite plusieurs textes de façon précise.

Pour le **volet Information du public**, objet partiel du chapitre V, les autorités françaises soulignent la nécessité de se **limiter à la diffusion de données qui ne permettent pas de remonter à un propriétaire**. Cela signifie de fait que les données portant sur les analyses des échantillons de sols ne doivent pas être rendues accessibles au public et que seules les données des descripteurs à l'échelle d'une unité homogène de sol peuvent être rendues publiques.

Les autorités françaises alertent sur la nécessité de **revoir la fréquence de rapportage des 5 ans** qui mériterait d'être rallongée, comme évoqué lors du groupe du 21 novembre dernier.

Les autorités françaises poursuivent l'analyse du projet de directive proposé par la Commission européenne. Le cas échéant, elles compléteront les observations, questions et propositions figurant dans la présente note.

Article 10 – Gestion durable des sols

Proposition d'amendement

Considérant (42) :

Après « [...] Decision No 1313/2013/EU of the European Parliament and of the Council⁶², and national action plans established in accordance with Regulation (UE) .../... of the European Parliament and of the Council”

Ajouter :

“the sustainability criteria for agricultural and forest biomass, used for energy purposes, provided by article 29 of Directive (EU) 2018/2001 as revised by Directive (EU) 2023/2413 “

Proposition d'amendement

The Commission is empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.

Arguments

Inclure ce qui est considéré comme des pratiques à éviter pour la préservation des sols agricoles et forestiers au sein de la RED3 est un souci de cohérence entre les deux directives. Alors que la Directive Sols souhaite que les Etats membres définissent des « pratiques de gestion à éviter qui pourraient impacter négativement les sols », la RED, article 29(6) impose notamment aux Etats membres de disposer « d'une législation au niveau national ou infranational applicable dans la zone d'exploitation ainsi que de systèmes de suivi et d'application de ces règles en vue de garantir la préservation de la qualité des sols [forestiers] dans le but de prévenir les incidences négatives ». Les pratiques à éviter sont inscrites au sein de la directive RED3, il est donc pertinent de mentionner cette référence spécifique dans la Directive Sols, au sein du considérant (42) dédié. Une telle modification ne change pas l'esprit de l'article 10, qui laisse la main aux Etats Membres.

Les autorités françaises sont d'accord sur le principe de faire évoluer l'annexe III en fonction des connaissances scientifiques. Pour autant, le recours à un acte délégué pour modifier l'annexe n'est pas adapté : il est demandé de le remplacer par un acte d'exécution.

Article 11 - Principes d'atténuation de l'artificialisation des terres

Proposition d'amendement

Article 11 - Land take mitigation principles

Member States shall ensure that the following principles are respected in case of land take, **as part of the plans and programmes set up within its territory** :

(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 **the conversion of natural or semi-natural land into artificial land [and encouraging the renaturation of artificial land]** ~~to the extent possible and~~

(ii) selecting areas where the loss of ecosystem services would be minimized and

(iii) performing the land take in a way that minimizes the negative impact on soil;

(b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services.

Arguments

Le remplacement du terme « sols » par celui de « terres » constitue une mesure de cohérence.

L'ajout de la mention de l'intégration de ces principes dans le cadre des plans et programmes vise à bien indiquer que ces principes et plus généralement l'artificialisation des sols sont suivis dans le cadre de la **planification territoriale, qui apparaît comme une échelle pertinente pour élaborer ce suivi** et pour dessiner une trajectoire territorialisée de réduction de l'artificialisation des sols.

La nouvelle rédaction du i) proposée s'attache à mettre en avant plus clairement que **l'objectif est de réduire le flux d'artificialisation des sols et non pas le stock de surfaces artificialisées.**

Article 18 – Rapports des Etats membres

Cet article définit notamment **les modalités de rapportage des données de surveillance et de suivi de la santé des sols** à la Commission européenne.

La France demande de **modifier les fréquences de rapportage** mentionnées au paragraphe 1 pour les rendre compatibles avec celles mentionnées dans le chapitre II afin d'aligner a minima les périodes de rapportage sur celles de la directive cadre sur l'eau (à savoir **6 ans**), sans que cela n'impose de surveiller tous les descripteurs de la santé des sols à cette fréquence

Les autorités françaises demandent également à la Commission de confirmer que les données mentionnées au a) du paragraphe 1 correspondent aux valeurs des **descripteurs calculés à l'échelle d'une unité homogène de sol** et non aux valeurs des analyses des échantillons de sols. La France demande que **les données rapportées ne soient pas géolocalisées** afin de ne pas permettre de remonter au propriétaire du terrain analysé.

Les autorités françaises précisent qu'il sera difficile de voir des évolutions sur certains descripteurs étant donné les rythmes d'évolution naturels qui peuvent être très lents (alinéas b) et c) du paragraphe 1)

Proposition de rédaction

Article 18 - Reporting by Member States

1. Member States shall electronically report the following data and information to the Commission and to the EEA every 5 **6** years:

- (a) the data and results of the soil health monitoring **at the level of a homogeneous soil unit** and assessment carried out in accordance with Articles 6 to 9;
- (b) a trend analysis of the soil health for the descriptors listed in parts A, B, and C of Annex I and for the land take and soil sealing indicators listed in part D of Annex I in accordance with Article 9;
- (c) a summary of the progress on:
- (i) implementing sustainable soil management principles in accordance with Article 10;
 - (ii) the registration, identification, investigation, and management of contaminated sites in accordance with Articles 12 to 16;
- (d) the data and information contained in the register referred to in Article 16.
- The first reports shall be submitted by ... (OP: please insert date = **8 years** ~~and 6 months~~ after entry into force of the Directive).
2. Member States shall ensure that the Commission and the EEA have permanent access to the information and data referred to in paragraph 1.
3. Member States shall provide the Commission with online access to the following:
- (a) an up-to-date list and spatial data of their soil districts referred to in Article 4 by ... (OP: please insert the date = 2 years and 3 months after date of entry into force of the Directive);
 - (b) an up-to-date list of the competent authorities referred to in Article 5 by ... (OP: please insert the date = 2 years and 3 months after date of entry into force of the Directive);
 - (c) the measures and sustainable soil management practices referred to in Article 10 by... (OP: please insert the date = 4 years and 3 months after date of entry into force of the Directive).
4. The Commission is empowered to adopt implementing acts establishing the format and the modalities for submitting the information referred to paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Article 19 – Information du public

Les autorités françaises demandent à la Commission de **préciser explicitement le périmètre** mentionné dans cet article. La France est **opposée à une diffusion des données géolocalisées** au point de surveillance. Elle n'est en revanche pas opposée à diffuser des valeurs moyennes à l'échelle d'une unité homogène de sol (à l'instar des masses d'eau de la Directive cadre sur l'eau).

Article 20 – acte délégué

Les autorités françaises considèrent, au regard de l'importance des informations techniques des annexes I, II, V et VI, notamment celles relatives aux méthodologies qui y sont mentionnées, que le pouvoir de la **Commission doit passer par un acte d'exécution et non un acte délégué.**

Traduction de courtoisie
Courtesy translation

Subject: Proposal for revision of the Soils Directive - Written comments from the French authorities following the group of November 30, 2023

The French authorities thank the Commission for its proposal for a soil directive and would like to provide the following written comments following the WPE of 30 November. They once again indicate their support for the proposed directive on soil monitoring and resilience put forward by the European Commission.

For the “sustainable soil management” component, France is already implementing specific monitoring of soil artificialization and has initiated a trajectory to reduce soil artificialization. In this regard, it seems more appropriate to dissociate the monitoring of soil artificialization from that of the general framework of “soil monitoring”. Thus, the French authorities emphasize the importance of clearly distinguishing the objective of monitoring the good health of non-artificialized soils on the one hand and controlling artificialization on the other, for which they are in favor of a system specific monitoring, on a national scale.

The French authorities emphasize the fact that the content of Chapter III of the draft directive would benefit from being amended to better clarify the outline of the principles for mitigating land take.

Concerning the management of agricultural and forestry soils, they emphasize that France is in favor of defining sustainable management practices, rather than implementing an action or management plan.

The French authorities are seeking clarification from the European Commission on the following two points concerning Article 10:

- What she means in paragraph 2 (b) by “implementation of holistic soil management concept”
- On what would be expected by the regular evaluation of the effectiveness of the measures provided for in paragraph 3, these measures being above all the identification of sustainable soil management practices

The recommendations listed in Annex III on the principles of sustainable soil management are mainly adapted to agricultural soils, although some recommendations may also apply to other soils and that. It would also be useful to list sustainable practices for non-agricultural soils, particularly for maintaining the fertility of forest soils. It will also insist on the fact that it is essential that soil management practices are linked to different pedoclimatic contexts, for example the principle of “minimizing the physical disturbance of the soil” must not be able to be interpreted as a ban on plowing which may be necessary in many situations. Furthermore, for this aspect, it should be remembered that the revision of the RED3 directive (Renewable Energy Directive, revised by Directive (EU) 2023/2413 of October 18, 2023) rules on the obligation to guarantee the preservation of the quality of forest soils based on a list of several management practices to avoid. Some of the practices negatively impacting forest soils already appear in the RED, and the Soils Directive will necessarily have to rely on them in order to put Article 10 into practice in a coherent manner. This requirement for consistency, already mentioned in recital (28), would have its place in recital (42) which cites several texts precisely.

For the Public Information section, a partial subject of Chapter V, the French authorities emphasize the need to limit themselves to the dissemination of data which cannot be traced back to an owner. This de facto means that data relating to the analyzes of soil samples must not be made accessible to the public and that only descriptor data at the scale of a homogeneous unit of soil can be made public.

The French authorities are warning of the need to review the reporting frequency of 5 years which should be extended, as mentioned during the group of November 21.

This NAF does not prejudice the French position on the text as a whole, and may be supplemented by subsequent proposals.

Article 10 – Sustainable soil management

Proposed amendment

Considérant (42) :

After « [...] Decision No 1313/2013/EU of the European Parliament and of the Council⁶², and national action plans established in accordance with Regulation (UE) .../... of the European Parliament and of the Council”

Add :

“the sustainability criteria for agricultural and forest biomass, used for energy purposes, provided by article 29 of Directive (EU) 2018/2001 as revised by Directive (EU) 2023/2413 “

Proposed amendment

The Commission is empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.

Arguments

Including what are considered practices to avoid for the preservation of agricultural and forestry soils within RED3 is a concern for consistency between the two directives. While the Soils Directive requires Member States to define “management practices to be avoided which could negatively impact soils”, the RED, article 29(6) notably requires Member States to have “legislation at national or applicable in the area of exploitation as well as systems for monitoring and enforcement of these rules with a view to guaranteeing the preservation of the quality of [forest] soils with the aim of preventing negative impacts”. The practices to be avoided are included in the RED3 directive, it is therefore relevant to mention this specific reference in the Soils Directive, within the dedicated recital (42). Such a modification does not change the spirit of Article 10, which leaves control to Member States.

The French authorities agree on the principle of developing Annex III based on scientific knowledge. However, the use of a delegated act to modify the annex is not appropriate: it is requested to replace it with an implementing act.

Article 11 - Principles for mitigating land take

Proposed amendment

Article 11 - Land take mitigation principles

Member States shall ensure that the following principles are respected in case of land take, **as part of the plans and programmes set up within its territory** :

- (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 **the conversion of natural or semi-natural land into artificial land [and encouraging the renaturation of artificial land]** ~~to the extent possible~~ and
 - (ii) selecting areas where the loss of ecosystem services would be minimized and
 - (iii) performing the land take in a way that minimizes the negative impact on soil;
- (b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services.

Arguments

Replacing the term “soils” with “land” constitutes a measure of consistency.

The addition of the mention of the integration of these principles within the framework of plans and programs aims to clearly indicate that these principles and more generally the artificialization of land are followed within the framework of territorial planning, which appears as a scale relevant for developing this monitoring and for drawing a territorialized trajectory for reducing land artificialization.

The proposed new wording of i) seeks to highlight more clearly that the objective is to reduce the flow of land artificialization and not the stock of artificialized surfaces.

Article 18 – Reports from Member States

This article defines in particular the methods for reporting soil health surveillance and monitoring data to the European Commission.

France requests to modify the reporting frequencies mentioned in paragraph 1 to make them compatible with those mentioned in Chapter II in order to align at least the reporting periods with those of the Water Framework Directive (i.e. 6 years) , without this requiring monitoring of all soil health descriptors at this frequency.

The French authorities also ask the Commission to confirm that the data mentioned in (a) of paragraph 1 correspond to the values of the descriptors calculated on the scale of a homogeneous unit of soil and not to the values of the analyzes of soil samples. France requests that the data reported not be geolocated so as not to be able to trace the owner of the land analyzed.

The French authorities specify that it will be difficult to see changes in certain descriptors given the natural rates of evolution which can be very slow (paragraphs b) and c) of paragraph 1).

Redaction Proposal

Article 18 - Reporting by Member States

1. Member States shall electronically report the following data and information to the Commission and to the EEA every 5 6 years:

(a) the data and results of the soil health monitoring at the level of a homogeneous soil unit and assessment carried out in accordance with Articles 6 to 9;

(b) a trend analysis of the soil health for the descriptors listed in parts A, B, and C of Annex I and for the land take and soil sealing indicators listed in part D of Annex I in accordance with Article 9;

(c) a summary of the progress on:

(i) implementing sustainable soil management principles in accordance with Article 10;

(ii) the registration, identification, investigation, and management of contaminated sites in accordance with Articles 12 to 16;

(d) the data and information contained in the register referred to in Article 16.

The first reports shall be submitted by ... (OP: please insert date = ~~8 years~~ **and 6 months** after entry into force of the Directive).

2. Member States shall ensure that the Commission and the EEA have permanent access to the information and data referred to in paragraph 1.

3. Member States shall provide the Commission with online access to the following:

(a) an up-to-date list and spatial data of their soil districts referred to in Article 4 by ... (OP: please insert the date = 2 years and 3 months after date of entry into force of the Directive);

(b) an up-to-date list of the competent authorities referred to in Article 5 by ... (OP: please insert the date = 2 years and 3 months after date of entry into force of the Directive);

(c) the measures and sustainable soil management practices referred to in Article 10 by... (OP: please insert the date = 4 years and 3 months after date of entry into force of the Directive).

4. The Commission is empowered to adopt implementing acts establishing the format and the modalities for submitting the information referred to paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Article 19 – Public information

The French authorities ask the Commission to explicitly specify the perimeter mentioned in this article. France is opposed to the dissemination of geolocated data at the surveillance point. On the other hand, it is not opposed to

disseminating average values on the scale of a homogeneous unit of soil (like the bodies of water in the Water Framework Directive).

Article 20 – delegated act

The French authorities consider, in view of the importance of the technical information in Annexes I, II, V and VI, in particular that relating to the methodologies mentioned therein, that the Commission's power must come through an implementing act and not a delegated act.

PORTUGAL

Comments – Soil Monitoring Directive – Follow-up of the meeting held on the 30th of November.

Article 18 - Reporting by Member States

Regarding paragraph (4) - The format and the modalities for submitting the information, referred to in paragraphs 1 and 2, are important and should be circulated as soon as possible. This will allow MS to achieve a "transpose function" enabling them to adapt their own databases to the reporting and "permanent access" to the information obligations foreseen in paragraphs 1 and 2.

Article 19 - Information to the public

1 - It would be useful to have permanent communication in the first years of implementation of the Directive with the European Data Protection Authority, among other support bodies, and/or a methodology/flowchart how to quickly define whether the data in question can be made public.

2 - For public consultation on the register and information of potentially contaminated sites, we believe that regarding the activities mentioned on the article 12, paragraph 2, and the historical contamination with a liable party identified, should have a limited time (e.g., 1 year) to accomplish the investigation before becoming public. This way the operator/responsible for the investigation shall have some time and an incentive to accomplish soil evaluation.

Article 25 - Transposition

We agree with the proposal of some MS regarding the extension of the deadline for the transposition of this Directive from 2 to 3 years.

Annex IV – Programmes, Plans, Targets and Measures Referred to in Article 10

Regarding Annex IV, we would echo the comments provided earlier on safeguarding soil biodiversity: At the end of this process, soil, water and air will also be protected by a European legal framework. Bearing this in mind, it would be important to have a hierarchy of environmental values, as without it, conflicts may arise in the protection of different natural resources.

IRELAND

Comments on the proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Soil Monitoring and Resilience (Soil Monitoring Law)

4 December 2023

Presidency invited Member States to send written comments and by 4 December 2023. Ireland proposes following amendments and related comments however, it retains the reservation for further scrutiny.

Chapter I

General provisions

Article 1

Objective and Subject matter

1. The objective of the Directive is to put in place a ~~solid~~^{stable} 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 objective of the Directive is to put in place a ~~solid~~ stable and coherent soil monitoring framework for all soils across the EU...

Solid reads as impenetrable, which is not the intention of the proposal.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) 'soil' means the top layer of the Earth's crust situated between the bedrock and the land surface, which is composed of mineral particles, organic matter, water, air and living organisms;
- (2) 'ecosystem' means a dynamic complex of plant, animal, and micro-organism communities and their non-living environment interacting as a functional unit;
- (3) 'ecosystem services' means indirect contributions of ecosystems to the economic, social, cultural and other benefits that people derive from those ecosystems;
- (4) 'soil health' means the physical, chemical and biological condition of the soil determining its capacity to function as a vital living system and to provide ecosystem services;
- (5) 'sustainable soil management' means soil management practices that maintain or enhance the ecosystem services provided by the soil without impairing the functions enabling those services, or being detrimental to other properties of the environment;
- (6) 'soil management practices' mean practices that impact the physical, chemical or biological qualities of a soil;
- (7) 'managed soils' means soils where soil management practices are carried out;
- (8) 'soil district' means the part of the territory of a Member State, as delimited by that Member State in accordance with this Directive;
- (9) 'soil health assessment' means the evaluation of the health of the soil based on the measurement or estimation of soil descriptors;
- (10) 'contaminated site' means a delineated area of one or several plots with confirmed presence of soil contamination caused by point-source anthropogenic activities;
- (11) 'soil descriptor' means a parameter describing a physical, chemical, or biological characteristic of soil health;
- (12) 'land' means the surface of the Earth that is not covered by water;

- (13) 'land cover' means the physical and biological cover of the earth's surface;
- (XX) 'Land use' means activities undertaken at a location for example environmental, economic or social. It implies the existence of some forms of human intervention or management.**
- (14) 'natural land' means an area where human activity has not substantially modified an area's primary ecological functions and species composition;
- (15) 'semi-natural land' means an area where ecological assemblages have been substantially modified in their composition, balance or function by human activities, but maintain potentially high value in terms of biodiversity and the ecosystem services it provides;
- (16) 'artificial land' means land used as a platform for constructions and infrastructure or as a direct source of raw material or as archive for historic patrimony at the expense of the capacity of soils to provide other ecosystem services;
- (17) 'land take' means the conversion of natural and semi-natural land into artificial land;
- (18) 'transfer function' means a mathematical rule that allows to convert the value of a measurement, performed using a methodology different from a reference methodology, into the value that would be obtained by performing the soil measurement using the reference methodology;
- (19) 'public concerned' means the public affected or likely to be affected by soil degradation, or having an interest in the decision-making procedures related to the implementation of the obligations under this Directive, including land owners and land users, as well as non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law.
- (20) 'soil contamination' means the presence of a chemical or substance in the soil in a concentration that may be harmful to human health or the environment;
- (21) 'contaminant' means a substance liable to cause soil contamination;
- (22) 'regeneration' means an intentional activity aimed at reversing soil from degraded to healthy condition;

- (23) 'risk' means the possibility of harmful effects to human health or the environment resulting from exposure to soil contamination;
- (24) 'soil investigation' means a process to assess the presence and concentration of contaminants in the soil which is usually performed in different stages;
- (25) 'geographically explicit' means information referenced and stored in a manner that permits it to be mapped and localised with specific precision and accuracy.
- (26) 'soil remediation' means a regeneration action that reduces, isolates or immobilizes contaminant concentrations in the soil.

Suggest there is a need for a definition for Land use as well as land cover.

The term "land use" is often used interchangeably with land cover or landscape. The request is made based on need for clarity that are two very different things.

Article 5

Competent authorities

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. **A competent authority may be responsible for multiple soil districts.**

Clarity that a competent authority may be responsible for more than one soil district

Chapter II

Monitoring and assessment of soil health

Article 6

Soil health and land take monitoring framework

1. Member States shall establish a monitoring framework based on the soil districts established in accordance with Article 4(1), to ensure that regular and accurate monitoring of soil health is carried out in accordance with this Article and Annexes I and II.
2. Member States shall monitor soil health and land take in each soil district.
3. The monitoring framework shall be based on the following:
 - (a) the soil descriptors and soil health criteria referred to in Article 7;
 - (b) the soil sampling points to be determined in accordance with Article 8(2);
 - (c) the soil measurement carried out by the Commission in accordance with paragraph 4 of this Article, if any;
 - (d) the remote sensing data and products referred to in paragraph 5 of this Article, if any;
 - (e) the land take and soil sealing indicators referred to in Article 7(1).
4. The 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.
5. The Commission and the European Environment Agency (EEA) shall leverage existing space-based data and products delivered under the Copernicus component of the EU Space Programme established by Regulation (EU) 2021/696 to explore and develop soil remote sensing products, to support the Member States in monitoring the relevant soil descriptors.
6. The Commission and the EEA shall, on the basis of existing data and within two years of the entry into force of this Directive, establish a digital soil health data portal that shall provide access in georeferenced spatial format to at least the available soil health data resulting from:
 - (a) the soil measurements referred to in Article 8(2);

- (b) the soil measurements referred to in paragraph 4 of this Article;
- (c) the relevant soil remote sensing data and products referred to in paragraph 5 of this Article.
7. The digital soil health data portal referred to in paragraph 6 may also provide access to other soil health related data than the data referred to in that paragraph if those data were shared or collected in accordance with the formats or methods established by the Commission pursuant to paragraph 8.
8. The Commission shall adopt implementing acts to establish formats or methods for sharing or collecting the data referred to in paragraph 7 or for integrating those data in the digital soil health data portal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Standing concerns on the holding of data of individuals, including location of sampling points.

Article 7

Soil descriptors, criteria for healthy soil condition, and land take and soil sealing indicators

1. When monitoring and assessing soil health, Member States shall apply the soil descriptors and soil health criteria listed in Annex I.
- When monitoring land take, Member States shall apply the land take and soil sealing indicators referred to in Annex I.
2. Member States may adapt the soil descriptors and the soil health criteria referred to in part A of Annex I, in accordance with the specifications referred to in the second and third columns in part A of Annex I.
3. Member States shall determine the organic contaminants for the soil descriptor related to soil contamination referred to in part B of Annex I.
4. Member States shall set soil health criteria for the soil descriptors listed in part B of Annex I in accordance with the provisions set out in the third column in part B of Annex I.

5. Member States may set additional soil descriptors and land take indicators, including but not limited to the optional descriptors and indicators listed in part C and D of Annex I, for monitoring purposes ('additional soil descriptors' and 'additional land take indicators').
6. Member States shall inform the Commission when soil descriptors, land take indicators and soil health criteria are set or adapted in accordance with paragraphs 2 to 5 of this Article.

Standing concerns over the choice of descriptors and if they are relevant all soil types across the Union. Notwithstanding this, the objective for a harmonised set of descriptors is desirable.

Article 8

Measurements and methodologies

1. Member States shall determine sampling points by applying the methodology set out in part A of Annex II.
2. Member States shall carry out soil measurements by taking soil samples at the sampling points referred to in paragraph 1 and collect, process and analyse data in order to determine the following:
 - (a) the values of the soil descriptors as set in Annex I;
 - (b) where relevant, the values of the additional soil descriptors;
 - (c) the values of the land take and soil sealing indicators listed in part D of Annex I.
3. Member States shall apply the following:
 - (a) the methodologies for determining or estimating the values of the soil descriptors set out in part B of Annex II;
 - (b) the minimum methodological criteria for determining the values of the land take and soil sealing indicators set out in part C of Annex II;

- (c) any requirements laid down by the Commission in accordance with paragraph 6.

Member States may apply other methodologies than the ones listed in the first subparagraph, points (a) and (b), provided that validated transfer functions are available, as required in Annex II, part B, fourth column.

4. Member States shall ensure that the first soil measurements are performed at the latest by... *(OP: please insert the date = 4 years after date of entry into force of the Directive)*.
5. Member States shall ensure that new soil measurements are performed at least every 5 years.

Member States shall ensure that the value of the land take and soil sealing indicators are updated at least every year.

6. The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex II in order to adapt the reference methodologies mentioned in it to scientific and technical progress, in particular where values of soil descriptors can be determined by remote sensing referred to in Article 6(5).

There is a request to have a focused workshop on this with the National Technical Experts and the CION. To bring clarity and consensus to the ambition of this Article.

Article 9

Assessment of the soil health

1. Member States shall assess the soil health in all their soil districts based on the data collected in the context of the monitoring referred to in Articles 6, 7 and 8 for each of the soil descriptors referred to in Parts A and B of Annex I.

Member States shall also take into account the data collected in the context of soil investigations referred to in Article 14.

Member States shall ensure that soil health assessments are performed at least every 5 years and that the first soil health assessment is performed by ... *(OP: please insert the date = 5 years after date of entry into force of the Directive)*.

2. A soil is considered healthy in accordance with this Directive where the following cumulative conditions are fulfilled:

- (a) the values for all soil descriptors listed in part A of Annex I meet the criteria laid down therein and, where applicable, adapted in accordance with Article 7;
- (b) the values for all soil descriptors listed in part B of Annex I meet the criteria set in accordance with Article 7 ('healthy soil').

By way of derogation from the first subparagraph the assessment of soils within a land area listed in the fourth column of Annex I, shall not take into account the values set out in the third column for that land area.

Soil is unhealthy where at least one of the criteria referred to in subparagraph 1 is not met ('unhealthy soil').

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.

Member States shall analyse the values of land take and soil sealing indicators listed in part D of Annex I and assess their impact on the loss of ecosystem services and on the objectives and targets established under Regulation (EU) 2018/841.

4. Based on the assessment of soil health carried out in accordance with this Article, the competent authority shall, where relevant in coordination with local, regional, national authorities, identify, in each soil district, the areas which present unhealthy soils and inform the public in accordance with Article 19.

5. Member States shall 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.

The Commission may adopt implementing acts to harmonise the format of soil health certification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

6. Member States shall communicate soil health data and assessment referred to in Articles 6 to 9 to the relevant land owners and land managers upon their request, in particular to support the development of the advice referred to in Article 10(3).

Reservation on Art 9 (2) would suggest an alternative to the one out all out proposal. Would propose a RAG (Red, Amber, Green) status. The idea would be to allow one fail of one the criteria, classing the soil as in need of improvement and appropriate plan put in place.

If following the next testing cycle the soil fails, the same or more than two criteria it would be deemed RED or unhealthy.

A soils health status is determined in accordance with this Directive where the following cumulative conditions are fulfilled:

(a) Green and healthy were the values for all soil descriptors listed in part A of Annex I meet the criteria laid down therein and, where applicable, adapted in accordance with Article 7;

(b) Green and healthy were the values for all soil descriptors listed in part B of Annex I meet the criteria set in accordance with Article 7 ('healthy soil').

(c) Amber and in need of improvement were one of the criteria referred to in subparagraph 1 is not met.

Were in a consecutive testing period an amber soil meets all of the criteria referred to in subparagraph 1, it can be reclassified as Green and healthy.

Were in a consecutive testing period an amber soil fails one different criteria to which it originally failed, it shall remain classed as Amber.

Were in a consecutive testing period an amber soil fails the same criteria or more than one than one criteria, it shall be reclassified as Red and unhealthy.

(d) Soil is Red and unhealthy where two of the criteria referred to in subparagraph 1 are not met ('unhealthy soil') or an amber soil that in a consecutive testing period fails the same or any two of the criteria.

Chapter III

Sustainable soil management

Article 10

Sustainable soil management

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.

Member States shall identify synergies with the programmes, plans and measures set out in Annex IV. The soil health monitoring data, the results of the soil health assessments, the analysis referred to in Article 9 and the sustainable soil management measures shall inform the development of the programmes, plans and measures set out in Annex IV.

Member States shall ensure that the process of elaboration of the practices referred to in the first subparagraph is open, inclusive and effective and that the public concerned, in particular landowners and managers, are involved and are given early and effective opportunities to participate in their elaboration.

2. Member States shall ensure easy access to impartial and independent advice on sustainable soil management, training activities and capacity building for soil managers, landowners and relevant authorities.

Member States shall also take the following measures:

- (a) promoting awareness on the medium- and long-term multiple benefits of sustainable soil management and the need to manage soils in a sustainable manner;
 - (b) promoting research and implementation of holistic soil management concepts;
 - (c) making available a regularly updated mapping of available funding instruments and activities to support the implementation of sustainable soil management.
3. Member States shall regularly assess the effectiveness of the measures taken in accordance with this Article and, where relevant, review and revise those measures, taking into account the soil health monitoring and assessment referred to in Articles 6 to 9.
4. The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.

Consideration should be given to having this Article entering into force 7 years after date of entry into force of the Directive so that it can take full account of the outcome of the soil assessments carried out in accordance with Article 9

Chapter V

Financing, information to the public and reporting by Member States

Article 17

Union financing

Given the priority inherently attached to the establishment of soil monitoring and sustainable management and regeneration of soils, the implementation of this Directive shall be supported by existing Union financial programmes in accordance with their applicable rules and conditions.

More detail on proposed Union financing mechanism is requested

ENDS

AUSTRIA

Comments on Soil Monitoring and Resilience Directive

Austria thanks the European Commission for the written answers to the questions raised by the Member States. The last four Council Working Group meetings have contributed to a better understanding.

The general statements in the already submitted comments (Austrian Comments on Soil Monitoring and Resilience Directive WK11669.EN.23) as well as the uniform statement of the federal states on questions of subsidiarity and proportionality (VSt-6515/117, transmitted on October 2nd, 2023 to the Committee of the Regions, Department for Subsidiarity Control) remain upright.

According to the Presidency's offer to submit concrete amendments Austria would like to contribute the following comments and proposals to the discussion:

Cluster 4

Chapter 1

Article 3:

(19)

The term "public affected" does not distinguish between those directly affected (land owners and land users) and third parties (NGOs). This does not appear to be objectively justified, as this concerns information that relates almost exclusively to private property in general. We again request further clarification. In the context of Article 10, the "public concerned" should only include landowners and land managers or at least a differentiated approach regarding rights resulting from being directly or indirectly effected.

(22)

The European Commission is invited to clarify the relationship and/or differences between "regeneration" and "soil remediation" (Article 3(26)).

(25)

What is meant by geographically explicit? What is the precision behind this or is it a question of parcel precision?

Chapter 3

Article 10:

Sustainable soil management is implemented on the basis of the Common Agricultural Policy (CAP) and national activities. In Austria, voluntary measures to improve soil quality are playing an important role in the agri-environmental measures. If the implementation of Article 10 were to lead to measures becoming mandatory and thus funding no longer being possible, this would lead to income loss of farmers and therefore cannot be acceptable from an Austrian perspective. The legal text must be drafted in such a way that the common agricultural policy, including the voluntary incentive systems, remains the basis for the implementation of sustainable soil management in agriculture. It will be very difficult to implement this article for other cultivated areas such as parks, home gardens etc. A differentiated approach per land category would be needed here.

Proposal:

10.1. 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 **in accordance with the competent authorities (e.g. considering soil type, use and condition)** ~~respecting~~ taking into account the relevant sustainable soil management principles listed in Annex III **and regeneration practices** to be gradually implemented on **all the** managed soils ~~and, considering 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;~~

Justification: The annex III should only to be understood as a guideline and therefore use the phrase "taking into account" instead of "respecting". This would also be in line with recital 37.

In terms of subsidiarity, we highlight that this provision massively interferes with national rights and possibly also directly addresses land use changes, e.g. the creation of landscape elements. Furthermore, soil management practices or regeneration practices should only be gradually implemented in the case of demonstrably unhealthy soils. For those soils that are not currently at risk it should be at the discretion of the authority to decide on the necessity of soil management practices and regeneration measures.

10. Subparagraph 4:

Proposal:

Member States shall ensure that the process of elaboration of the practices referred to in the first subparagraph is open, inclusive and effective and that ~~the public concerned, in particular~~ land owners and managers, are involved and are given early and effective opportunities to participate in their elaboration.

Justification: In subparagraph 4, Austria advocates that the term "public concerned" in this context should be deleted or should refer exclusively to land managers and landowners.

10.4.

Proposal:

The Commission is empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 21 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.

Justification: Austria rejects delegated acts in this context, as the principles in Annex III are very essential parts of the Directive that should only be amended with sufficient involvement of the Member States. This is all the more the case if Annex III continues to be regarded as binding when determining national or regional management practices.

Article 11:

Proposal:

11.1. Member States shall **seek to** ensure that the following principles are respected in case of land take:

Justification: Austria expressly points out that the EU has no regulatory competence in the area of spatial planning. Therefore the provisions in question are regarded as non-binding. With regard to the compensation for loss of soil capacity information on the state of the art in Europe is scarce. More clarification (guidelines, examples) is requested in this context.

Chapter 5

Article 18:

Excessive reporting obligations should be avoided. A detailed examination of this provision should be carried out once the content of the Directive has been finalized.

In this context, it should be noted that the deadlines provided for in the Directive are very ambitious and still need to be discussed. Austria advocates longer deadlines overall.

18.2.

The Commission is asked to clarify why permanent access to MS data is required in addition to the reporting obligation under 18.1.

Article 19:

Proposal:

~~Article 19~~

~~Information to the public~~

~~1. Member States shall make public the data generated by the monitoring carried out under Article 8 and the assessment carried out under Article 9 of this Directive accessible to the public, in accordance with the provisions under Article 11 of Directive 2007/2/EC of the European Parliament~~

~~and of the Council⁷⁹ for geographically explicit data and Article 5 of Directive (EU) 2019/1024 for other data.~~

~~2. The Commission shall ensure that soil health data made accessible through the digital soil health data portal referred to in Article 6 is available to the public in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the~~

~~79 Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).~~

~~EN 43-EN~~

~~Council⁸⁰ and Regulation (EC) No 1367/2006 of the European Parliament and of the Council⁸¹.~~

~~3. Member States shall ensure that the information referred to in Article 18 of this Directive is available and accessible to the public in accordance with Directive 2003/4/EC, Directive 2007/2/EC and Directive (EU) 2019/1024 of the Parliament and of the Council⁸².~~

~~4. Disclosure of any information required under this Directive may be refused or restricted where the conditions laid down in Article 4 of Directive 2003/4/EC are fulfilled.~~

Justification: Public information on environmental issues is already sufficiently regulated by the Aarhus Convention, so there is no need for any further specification. The article should therefore be deleted. The planned publication of potentially contaminated areas - see Article 16 - is also viewed critically.

Chapter 6

Article 20:

Proposal:

~~Exercise of the delegation~~

~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~

~~2. The power to adopt delegated acts referred to in Articles 8, 10, 15 and 16 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.~~

~~3. The delegation of power referred to in Articles 8, 10, 15 and 16 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~

~~4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.~~

~~5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

~~6. A delegated act adopted pursuant to Articles 8, 10, 15 and 16 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the~~

~~expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.~~

Justification: In general, Austria does not support delegated acts and considers them to be critical, also with regard to Art. 8, 10, 15 and 16, because subsequent data expansions can lead to additional costs. Above that amendments to these articles may well have a significant impact on the Directive and should therefore not be amended by means of delegated acts. Therefore Austria proposes to delete this Article.

Article 21:

Proposal:

21.2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

~~New: Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.~~

Justification: Austria proposes that if the Committee does not issue an opinion, the Commission should not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 should apply ("no opinion clause"). This provision would then be identical to the SEA Directive.

Chapter 7

Article 22:

Proposal:

~~Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities.~~

~~Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient.~~

~~Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary.~~

~~Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.~~

Justification: The current jurisprudence of the Aarhus Convention itself already provides for sufficient legal protection, so that Art. 22 of the draft is not considered necessary in order to prevent double legislation, the article should be deleted.

Article 23:

This provision is incompatible with the principle of proportionality, as it leaves the Member States no room for manoeuvre with regard to the sanctions to be imposed and lays down far too narrow guidelines for national sanctions. The determination of penalties should be left to the member states so that they can embed them in their existing administrative criminal law.

Article 24:

Proposal:

24.1. By (OP: please insert the date = ~~6~~ 11 years after the date of entry into force of the Directive), the Commission shall carry out an evaluation of this Directive to assess the progress towards its objectives and the need to amend its provisions in order to set more specific requirements to ensure that unhealthy soils are regenerated and that all soils will be healthy by 2050.

Justification: An evaluation of the directive after a single soil monitoring and shortly after the introduction of soil management practices is considered too early. At this point in time, it is not yet possible to make any well-founded statements on the impact of the Directive. It is therefore proposed that the evaluation be carried out after the second soil health assessment has been completed.

Article 25:

Proposal:

25.1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [OP please insert date = ~~2~~ 3 years after date of entry into force of the Directive]. They shall forthwith communicate to the Commission the text of those provisions.

Justification: The planned deadlines for implementation are very ambitious overall. The Member States should also have a longer period of at least 3 years for legal implementation. Austria advocates longer deadlines overall.

LITHUANIA**Comments on the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)****CLUSTER 4****Article 10 „Sustainable soil management“**

1. From (OP: please insert the date = 4 7 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;

Justification. We believe that the 4-year deadline in Article 10(1) is too short. Member States are obliged to define regeneration practices on the basis of the soil assessments carried out in accordance with Article 9. However, under Article 9, the first soil health assessment will only be carried out within 5 years. We therefore propose to set a later deadline in Article 10(1).

4. The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.

We have serious doubts on the amendment of Annex III by delegated act. We believe that the sustainable soil management principles set out in Annex III are essential elements of the Directive and should not be amended by delegated act. We would appreciate the opinion of the Council Legal Service on this matter.

Article 17 „Union financing“

*Given the priority inherently attached to the establishment of soil monitoring and sustainable management, ~~and~~ regeneration of soils **and management of contaminated sites**, the implementation of this Directive shall be supported by existing Union financial programmes in accordance with their applicable rules and conditions.*

Justification. Like any new proposal, this Directive will unavoidably bring financial and administrative burdens. However, as the implementation of the directive involves expensive sampling and testing, the financial burden will be extremely high. That's why Article 17 and access to EU funds are very important to us. The management of contaminated sites will also require significant financial resources. We hope that we will also be able to use EU funds here. We therefore suggest that Article 17 should also refer to the management of contaminated sites and that the phrase 'and the management of contaminated sites' should be inserted after 'soil remediation'.

We have a specific problem regarding contaminated sites. After Lithuania regained its independence, landowners got back their land that had been contaminated during the occupation. Therefore, we cannot apply the 'polluter pays' principle, even though the landowner is known. We hope that solutions and financial resources will be found for this situation.

We have carefully studied the "Guidance on EU funding opportunities for healthy soils". However, the Guidance mainly refers to funds for the current funding period that are already in use or have already been planned. This raises the question of whether there are additional funds that could be used. If not, whether future funding is planned.

We welcome the fact that the Commission will contribute 20% to soil monitoring. However, the need for national funds will remain very high. We have doubts about farmers' ability to participate in Soil Mission projects, as there is no guarantee that the applications submitted by scientists together with farmers will be selected. We are also concerned about possible financial burden on farmers who expect free soil sampling and assessment as foreseen in the EU Soil Strategy 2030.

Article 18 „Reporting by Member States“

1. Member States shall electronically report the following data and information to the Commission and to the EEA every ~~5~~ 6 years:

[...]

The first reports shall be submitted by ... (OP: please insert date = ~~5~~ 7 years and 6 months after entry into force of the Directive).

Justification. We believe that the frequency of reporting should be aligned with the reporting cycles of other legislation. Reporting every 5 years is too frequent, we suggest a 6-year periodicity. We also have suggested delaying the deadlines in other articles, namely Articles 8, 9 and 10. Accordingly, to be consistent, here we propose that the first reports shall be submitted by 7 years and 6 months after entry into force of the Directive.

Article 20 „Exercise of the delegation“

We are sceptical about delegated acts and believe that they should not amend essential elements of the Directive. We would appreciate the opinion of the Council Legal Service on this matter.

Article 22 “Access to justice”

We believe that including such provisions in sectoral directives is risky for several reasons:

1. Possible overlap with the Aarhus Convention and the Convention's Compliance Mechanism. Only the Compliance Committee can decide on the interpretation of the Convention and on violations by Member States. The question arises as to how the Commission would react in the event of indications that access to justice procedures under the Directive are being violated. Would the Commission itself decide on the infringement or would it refer the information to the Compliance Committee? We believe that in either case there would be ambiguities.

2. The inclusion of access to justice provisions in sectoral directives leads to different wording, which results in inconsistent interpretation. If there is a need to strengthen the implementation of the Aarhus Convention at EU level, this should be done in horizontal directives (Access to Environmental Information Directive 2003/4/EC, Public Participation Directive 2003/35/EC) rather than in sectoral legislation.

3. Problems in transposition into national law. We already have a situation where the access to justice is defined in slightly different terms in different pieces of legislation. This leads to different interpretations in case law when deciding whether to accept or reject a case.

Therefore, we would agree to delete Article 22. In case it is decided that articles on access to justice are necessary in sectoral directives, it is essential to ensure that the wording is identical everywhere and exactly in line with the Aarhus Convention.

Article 23 „Penalties“

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council, Member States shall lay down the rules on penalties applicable to ~~infringements~~ violations by natural and legal persons, of the national provisions adopted pursuant

to this Directive and shall ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

~~2. The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the violation. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. In the case of a violation committed by a legal person, such fines shall be proportionate to the legal person's annual turnover in the Member State concerned, taking account, inter alia, the specificities of small and medium-sized enterprises (SMEs).~~

3. Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:

(a) the nature, gravity, and extent of the ~~violation~~ **infringement**;

~~(b) the intentional or negligent character of the violation;~~

~~(c) the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment~~ **the environmental damage caused by the infringement.**

4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.

Justification. As we have already repeatedly stated when discussing other environmental files, we believe that the setting of penalties is a matter of national competence for Member States. We also believe that it is necessary to take a horizontal approach and harmonise provisions on penalties with other environmental legislation.

We strongly oppose the proposal to link penalties to turnover or income. Firstly, such proposal is incompatible with the Lithuanian legal system. In Lithuania, administrative penalties are imposed by environmental inspectors, who do not have the capacity and competence to assess the financial situation of natural or legal persons. Including these provisions would force us to change the whole system. Secondly, the Commission has indicated in its slides that the proposal does not impose direct obligations on landowners or managers. It is therefore not clear to whom such penalties should apply. We therefore strongly request the deletion of paragraph 2. We also request the deletion of paragraph 3(b).

Article 24 „Evaluation and review“

*By (OP: please insert the date = **6 8** years after the date of entry into force of the Directive), the Commission shall carry out an evaluation of this Directive to assess the progress towards its objectives and the need to amend its provisions in order to set more specific requirements to ensure that unhealthy soils are regenerated and that all soils will be healthy by 2050. This evaluation shall take into account, inter alia, the following elements:*

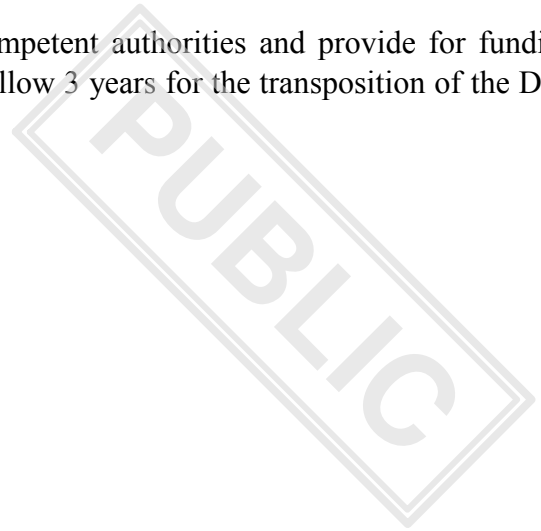
Justification. Since in Article 18 we propose to postpone the first reporting by Member States, we maintain consistency and propose to carry out the evaluation 8 years after the entry into force of the Directive.

Article 25 “Transposition”

*1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [OP please insert date = **2 3** years after date of entry into force of the Directive]. They shall forthwith communicate to the Commission the text of those provisions.*

Justification. We believe that 2 years is too short time to transpose the Directive. As the Directive introduces completely new requirements, we will have to create a fundamentally new legal

framework for soil, designate the responsible competent authorities and provide for funding and administrative capacity. We therefore propose to allow 3 years for the transposition of the Directive into national law.



FINLAND

Comments on the Soil Monitoring Law

Article 10 (Sustainable soil management) + Annex III & IV

FI comments: It is important to enhance sustainable soil management practices. In the soil monitoring law Member States need to have enough flexibility to take into account national circumstances and practices in different land use classes. It is also necessary to ensure that the formulation of article 10 doesn't limit Member State's power of decision regarding spatial planning and forest policy. We have reservation and take critical view towards delegated act in the article 10.

Text proposals into the article 10 and Annex III:Article 10

Member States shall take at least the following measures, taking into account the **geographical and climatic differences**, type, use and condition of soil:

- (a) defining sustainable soil management practices ~~[respecting]~~ **aiming to apply** 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.

The beginning of Annex III:

The following principles shall ~~[apply]~~ **aim to apply**:

Reasoning: The proposed changes in the text of article 10 and Annex III would help to better take into account different land use classes and geographical and climatic differences.

Article 11 (Land take mitigation principles)

FI comments: It is necessary to ensure that the formulation of article 11 doesn't limit Member State's power of decision regarding land use policy and forest policy. We will keep very close look on the development of this article.

Article 18 (Reporting by Member States)

FI comments: It is good to improve knowledge base and collect information on soils. However, we are reserved towards possible increased administrative burden. Reporting requirements need to be carefully examined in relation to resources as well as added value. We are analyzing reporting with experts and will give more specific comments later.

Article 19 (Information to the public)

FI comments: Regarding Article 19, we reiterate our comment concerning Articles 6.6 and 16, that the relationship of the proposal and Regulation on European statistics, Directive on public access to environmental information as well as General Data Protection Regulation should be clarified.

Article 22 (Access to justice)

FI proposal on the art. 22:

Member States shall ensure that, in accordance with the relevant national legal system, members of the public, ~~in accordance with national law,~~ that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of decisions by the competent authorities pursuant to this Directive. ~~the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities.~~ In addition to this, Member States shall ensure that, in accordance with their national law, members of the public have access to administrative or judicial procedures to challenge other acts and omissions by the competent authorities pursuant to this Directive.

Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient.

The judicial and administrative ~~Review~~ procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies including injunctive relief, as appropriate ~~where necessary.~~

Member States shall ensure that practical information is made available to the public on access to the ~~administrative and judicial and administrative review~~ procedures referred to in this Article.

Justification

We think that more flexibility should be given for Member States to use also other paths to access to justice, not just access to justice through courts. This is because the scope of the article is so broad: assessment of soil health and other measures taken under the Directive, the legality of procedures and negligence on the part of public authorities are all matters of a different legal nature and the related legal remedies, including access to justice, are organised differently in our national law. Under our national law, decisions by which an authority has decided a case or dismissed it as inadmissible may be appealed to a court. Under our national law we also have many provisions concerning the right to initiate proceedings, if an authority does not take such a decision. An administrative complaint to the Parliamentary Ombudsman or to the Chancellor of Justice may, on the other hand, be filed against any unlawful acts and omissions of an authority.

Administrative, non-judicial bodies may advance access to justice by providing quicker and less expensive ways of obtaining remedies in cases not involving a substantive decision by the competent authority, which is subject to judicial appeal.

Since the Directive does not include specific requirements for the competent authorities to take decisions pursuant to Directive, the proposed wording would leave flexibility for Member states with regard to this issue. For example according to our current national legislation (Environmental Act 527/2014) there is an obligation (Section 136) for the competent authority to take a decision on the treatment of contaminated soil (and groundwater). If the competent authority does not take such a decision, the party concerned and non-governmental organisation promoting environmental protection have a right to initiate proceedings (Section 186).

ITALY

Remarks and suggestions for amendments to the Commission proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Soil Monitoring and Resilience (Soil Monitoring Law)

Written comments by 4 December 2023

Italy desire to remark that the cluster discussed on the 30th is a sensitive part of the proposal, and proposed some amendments as illustrated below.

- As for **Article 10 (Sustainable management)**, Italy proposes to amend the text of point 1, with analogy of what is foreseen in the Air and the Water frameworks directives adding a sentence as follow:

1.From (OP: please insert date 4 years after the date of entry into force of the Directive), taking into account the type, use and status of the soil, Member States **shall set clear and achievable milestones and** take at least measures to...

- As for **Article 11 (Land take principles)**, Italy proposes to amend the text to include a more complete reference to the Land take hierarchy as included in the Soil Strategy and to underlying the priority of prevention of further land take. Proposed amendment:

Member States **shall adopt the land take hierarchy set out in the Soil Strategy for 2030 and** shall ensure that land use complies with the following principles:

(a) avoid new land take and reuse available artificial land (e.g. brownfield or unused buildings) before authorising new land take;

(b) avoid or reduce as much as possible, within the limits of technical and economic feasibility, the loss of soil capacity to provide multiple ecosystem services, including food production, by actions aimed at: (i) reducing as much as possible the area affected by land use; (ii) select areas where the loss of ecosystem services would be minimised; (eiii) occupy land in a manner that minimises adverse effects on it;

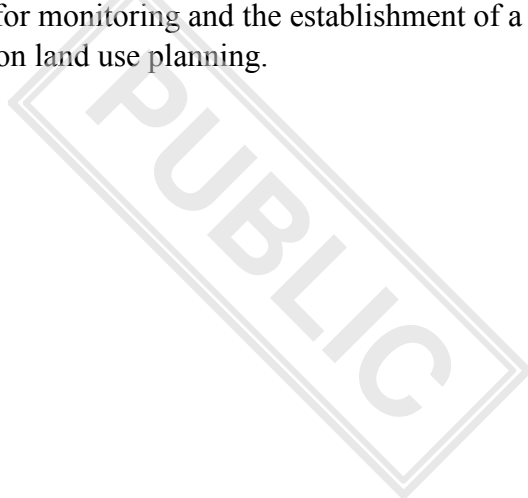
(c) compensate as much as possible for the loss of soil capacity to provide multiple ecosystem services **by returning services from renaturalised artificial areas.**

- As for **Article 17 (Financing)** Italy ask for the definition in the funding framework of specific commitments for funding the implementation of the Directive.

Italy supports the inclusion of all land use types in the Directive and the adopted definitions of land take and soil sealing, remarking that the land use is not appropriate to represent actual physical condition that is the object of monitoring. The priority of prevention of further land take and the necessity of compensation of the loss of ecosystem services should be explicitly considered.

As other MS, Italy asks for specific consideration for climate and land use conditions and for desertification and impact on food security, with specific attention to the Mediterranean area concerns, in all annexes.

On legal bases, Italy support the environmental relevance of soil health and the necessity to act for protect it primarily as a natural resource. The indication for monitoring and the establishment of a system of measures, does not limit national competence on land use planning.



WPE on 30 November 2023 – Comments

Article/Paragraph	Proposal of Corrections (bold)	Rational/ Comment
<u>Article 3 – paragraph 7</u> managed soils’ means soils where soil management practices are carried out;	<u>A COMMENT</u>	In order to address uncertainties, like whether maintaining forest trails and forest roads or anti-erosion forest soil measures are included, we propose to correlate the definition with the Corine Land Cover classes.
<u>Article 10 – paragraph 1</u> 10/1 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.	<u>Article 10 – paragraph 1</u> 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’s key funding programmes for research and innovation.	On research programmes, we propose a general phrase for defining them, instead of naming them specifically. i.e.: “EU’s key funding programme for research and innovation such as... Horizon Europe a Soil Deal for Europe”. In this way we would avoid possible inconsistencies between EU legislation and EU research and innovation programmes. Names of the programmes, funded by the EU are changing throughout the years and it may be more appropriate to use generic terms in this regard.
<u>Article 10 – paragraph 4</u> The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into	<u>Article 10 – paragraph 4</u> The Commission is empowered to adopt delegated implementing acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and	A preference for an implementing act instead of delegated act.

account scientific and technical progress.	technical progress.	
<p><u>Article 11</u></p> <p>Member States shall ensure that the following principles are respected in case of land take:</p> <p>(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:</p> <p>(i) reducing the area affected by the land take to the extent possible and</p> <p>(ii) selecting areas where the loss of ecosystem services would be minimized and</p> <p>(iii) performing the land take in a way that minimizes the negative impact on soil;</p> <p>(b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services</p>	<p><u>Article 11</u></p> <p>Member States shall ensure that the following principles are respected in case of land take:</p> <p>(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:</p> <p>(i) reducing the area affected by the land take to the extent possible and</p> <p>(ii) selecting areas where the loss of ecosystem services would be minimized and</p> <p>(iii) performing the land take in a way that minimizes the negative impact on soil;</p> <p>(b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services.</p> <p>(c) unsealing and restoring ecosystem services of soil</p> <p>(d) densification of urbanised areas taking into account the preservation of green spaces and natural terrain</p> <p>(e) revitalisation of brownfields</p>	<p>In addition to the listed mitigation principles, we believe it is also important to restore and increase soil resistance, which can be achieved by unsealing of soil, where is no human activity and restoring ecosystem services, revitalization of brownfields and rebuilding already sealed areas.</p> <p>To limit the effect of urban sprawl to land take it is recommended to increase the compactness of cities, towns and other settlements, focusing on appropriate forms of densification and the preservation of green spaces and natural terrain as important buffers to the effects of climate change, in particular to reduce the effects of heat islands, to manage rainwater runoff, to mitigate noise impacts and to provide fresh air.</p>
<p><u>Article 18 – paragraph 1</u></p> <p>1. Member States shall electronically report the following data and</p>	<p><u>Article 18 – paragraph 1</u></p> <p>1. Member States shall electronically report the following data and information to the</p>	<p>We propose longer deadlines in this Article as a consequence of the proposal for a longer period for the</p>

<p>information to the Commission and to the EEA every 5 years:</p> <p>(a) the data and results of the soil health monitoring and assessment carried out in accordance with Articles 6 to 9;</p> <p>(b) a trend analysis of the soil health for the descriptors listed in parts A, B, and C of Annex I and for the land take and soil sealing indicators listed in part D of Annex I in accordance with Article 9;</p> <p>(c) a summary of the progress on:</p> <p>(i) implementing sustainable soil management principles in accordance with Article 10;</p> <p>(ii) the registration, identification, investigation, and management of contaminated sites in accordance with Articles 12 to 16;</p> <p>(d) the data and information contained in the register referred to in Article 16. The first reports shall be submitted by ... (OP: please insert date = 5 years and 6 months after entry into force of the Directive)</p>	<p>Commission and to the EEA every 5 years:</p> <p>(a) the data and results of the soil health monitoring and assessment carried out in accordance with Articles 6 to 9;</p> <p>(b) a trend analysis of the soil health for the descriptors listed in parts A, B, and C of Annex I and for the land take and soil sealing indicators listed in part D of Annex I in accordance with Article 9;</p> <p>(c) a summary of the progress on:</p> <p>(i) implementing sustainable soil management principles in accordance with Article 10;</p> <p>(ii) the registration, identification, investigation, and management of contaminated sites in accordance with Articles 12 to 16;</p> <p>(d) the data and information contained in the register referred to in Article 16. The first reports shall be submitted by ... (OP: please insert date = 5 7 years and 6 months after entry into force of the Directive)</p>	<p>first soil measurements (at the latest by 6 years after date of entry into force of the Directive). We propose the first reports be submitted by 7 years and 6 months after entry into force of the Directive instead of 5 years and 6 months.</p>
<p><u>Article 18 – paragraph 3</u></p> <p>Member States shall provide the Commission with online access to the following:</p>	<p><u>Article 18 – paragraph 3</u></p> <p>Member States shall provide the Commission with online access to the following:</p> <p>(a) an up-to-date list and spatial data of their</p>	<p>Establishing Soil Districts is complex, it requires an interdisciplinary approach (e.g. environmental, soil, geology and climate sciences) and is time consuming. Therefore, we propose that up-to-date list and spatial data of soil districts is provided by 3 years and 3</p>

<p>(a) an up-to-date list and spatial data of their soil districts referred to in Article 4 by ... (OP: please insert the date = 2 years and 3 months after date of entry into force of the Directive);</p> <p>(b) an up-to-date list of the competent authorities referred to in Article 5 by ... (OP: please insert the date = 2 years and 3 months after date of entry into force of the Directive);</p> <p>(c) the measures and sustainable soil management practices referred to in Article 10 by... (OP: please insert the date = 4 years and 3 months after date of entry into force of the Directive).</p>	<p>soil districts referred to in Article 4 by 2 3 years and 3 months after date of entry into force of the Directive);</p> <p>(b) an up-to-date list of the competent authorities referred to in Article 5 by ... (OP: please insert the date = 2 3 years and 6 months after date of entry into force of the Directive);</p> <p>(c) the measures and sustainable soil management practices referred to in Article 10 by... (OP: please insert the date = 4 years and 3 months after date of entry into force of the Directive).</p>	<p>months after date of entry into force of the Directive, instead of 2 years and 3 months.</p> <p>After establishing Soil Districts, competent authorities can be appointed. Hence, the correction of the up-to-date list of the competent authorities should be provided by 3 years and 6 months.</p>
<p><u>Article 22</u></p> <p>Access to justice</p> <p>Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the</p>	<p>Access to justice</p> <p>Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities. Member States shall determine what constitutes a sufficient interest and impairment of a right,</p>	<p>We propose to delete the Article 22.</p>

<p>competent authorities. Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient. Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.</p>	<p>consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient. Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.</p>	
<p><u>Article 23</u></p> <p>Penalties 1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament</p>	<p><u>Article 23</u></p> <p>Penalties 1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council,</p>	<p>Our preferred option <u>would be to delete Article</u> on penalties. As a compromise we propose to keep only paragraph</p>

<p>and of the Council, Member States shall lay down the rules on penalties applicable to violations by natural and legal persons, of the national provisions adopted pursuant to this Directive and shall ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.</p> <p>2. The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the violation. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. In the case of a violation committed by a legal person, such fines shall be proportionate to the legal person's annual turnover in the Member State concerned, taking account, inter alia, the specificities of small and medium-sized enterprises (SMEs).</p> <p>3. Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:</p> <p>(a) the nature, gravity, and extent of the violation;</p> <p>(b) the intentional or negligent character of the violation;</p>	<p>Member States shall lay down the rules on penalties applicable to violations by natural and legal persons, of the national provisions adopted pursuant to this Directive and shall ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.</p> <p>2. The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the violation. The level of the fines shall be calculated in such a way as to make sure</p> <p>EN 45 EN</p> <p>that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. In the case of a violation committed by a legal person, such fines shall be proportionate to the legal person's annual turnover in the Member State concerned, taking account, inter alia, the specificities of small and medium-sized enterprises (SMEs).</p> <p>3. Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:</p> <p>(a) the nature, gravity, and extent of the violation;</p> <p>(b) the intentional or negligent character of the violation;</p> <p>(c) the population or the environment affected by the violation, bearing in mind the impact of</p>	<p>one – a general provision on penalties, so as not to affect national systems already in place.</p>
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<p>(c) the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment.</p> <p>4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.</p>	<p>the infringement on the objective of achieving a high level of protection of human health and the environment.</p> <p>4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.</p>	
<p><u>Article 24 – paragraph 1e</u></p> <p>By (OP :please insert the date = 6 years after the date of entry into force of the Directive), the Commission shall carry out an evaluation of this Directive to assess the progress towards its objectives and the need to amend its provisions in order to set more specific requirements to ensure that unhealthy soils are regenerated and that all soils will be healthy by 2050. This evaluation shall take into account, inter alia, the following elements:</p> <p>(a) the experience gained through the implementation of this Directive;</p> <p>(b) the data and information referred to in Article 18;</p> <p>(c) relevant scientific and analytical</p>	<p><u>Article 24 - paragraph 1e</u></p> <p>By (OP :please insert the date = 6 years after the date of entry into force of the Directive), the Commission shall carry out an evaluation of this Directive to assess the progress towards its objectives and the need to amend its provisions in order to set more specific requirements to ensure that unhealthy soils are regenerated and that all soils will be healthy by 2050. This evaluation shall take into account, inter alia, the following elements:</p> <p>(a) the experience gained through the implementation of this Directive;</p> <p>(b) the data and information referred to in Article 18;</p> <p>(c) relevant scientific and analytical data, including results from research projects funded by the Union;</p> <p>(d) an analysis of the gap towards achieving</p>	<p>Land take and soil sealing cause significant soil degradation and the loss of all or multiple ecosystem services. They should be avoided and controlled as much as possible. Therefore, also analysis of the possible need to establish the criteria for soil indicators listed in part D of annex I is needed.</p>

<p>data, including results from research projects funded by the Union; (d) an analysis of the gap towards achieving healthy soils by 2050; (e) an analysis of the possible need to adapt to scientific and technical progress the provisions of this Directive in particular regarding the following items: (i) the definition of healthy soils; (ii) the establishment of criteria for soil descriptors listed in part C of annex I; (iii) the addition of new soil descriptors for monitoring purposes.</p>	<p>healthy soils by 2050; (e) an analysis of the possible need to adapt to scientific and technical progress the provisions of this Directive in particular regarding the following items: (i) the definition of healthy soils; (ii) the establishment of criteria for soil descriptors listed in part C and soil indicators listed in part D of annex I; (iii) the addition of new soil descriptors for monitoring purposes.</p>	
<p><u>Article 25 – paragraph 1</u></p> <p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [OP please insert date = 2 years after date of entry into force of the Directive]. They shall forthwith communicate to the Commission the text of those provisions.</p>	<p><u>Article 25 – paragraph 1</u></p> <p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 3 years after date of entry into force of the Directive. They shall forthwith communicate to the Commission the text of those provisions.</p>	<p>In our view the provisions of this proposal are complex, interdisciplinary, time consuming and interdepartmental coordination will be necessary. We propose that Member States shall bring into force the provisions necessary to comply with this Directive by 3 years after date of entry into force of the Directive.</p>



Council of the European Union
General Secretariat

**Interinstitutional files:
2023/0232 (COD)**

Brussels, 06 December 2023

WK 16415/2023 INIT

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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 delegations

Following the above WPE meeting and the call for comments (WK 16161/23 INIT), delegations will find attached comments from CZ, DK, IE, FR, IT, LT, LU, NL, AT, PL, PT, SI, FI and SE.

LUXEMBOURG

Proposition de DIRECTIVE DU PARLEMENT EUROPÉEN ET DU CONSEIL relative à la surveillance et à la résilience des sols

-

Commentaires concernant le cluster 4

Commentaires concernant l'article 3

Le Luxembourg estime que la définition de « *sustainable soil management* » telle que proposée par la Commission se réfère plutôt à des « *sustainable soil management practices* », c'est-à-dire à des mesures ou des pratiques de gestion des sols permettant de maintenir ou d'améliorer les services écosystémiques fournis par les sols. Toutefois, le Luxembourg est d'avis que le concept de « *sustainable soil management* » soit indispensable, et propose donc d'inclure une définition dédiée. Ce concept de « *sustainable soil management* » irait au-delà des seules pratiques de gestion des sols, et engloberait d'une part les pratiques de gestion durable des sols (« *sustainable soil management practices* »), et d'autre part les impacts sur les sols engendrés par des changements d'usage des sols, voire même d'autres décisions de gestion (des terres) non liées aux sols.

En effet, le Luxembourg considère que les impacts qui ne sont pas liés à la gestion des sols, mais plutôt à leur changement d'usage ou à des décisions administratives, ne sont pas suffisamment pris en compte dans la définition actuelle de « *sustainable soil management* », alors que les impacts résultant de telles décisions peuvent s'avérer considérablement préjudiciables pour la santé des sols.

Pour ce qui précède, le Luxembourg propose les amendements suivants :

« sustainable soil management practices » means soil management practices that maintain or enhance the ecosystem services provided by the soil without impairing the functions enabling those services, or being detrimental to other properties of the environment;

« sustainable soil management » means management of soils and land which ensures the capacity of soils as a whole to provide all necessary ecosystem services for future generations;

Concernant la définition de « *soil management practices* », le Luxembourg estime que la notion de « *qualities* » introduit une certaine subjectivité qui pourrait être préjudiciable pour l'interprétation de ladite définition. En effet, une qualité se définit sur la base d'un référentiel, qui, dans ce cas, varie en fonction des usages du sol et des services écosystémiques considérés (p.ex. un même sol peut être de qualité différente pour la production de biomasse agricole et pour le support de biodiversité).

Afin d'éviter des interprétations divergentes, le Luxembourg propose l'amendement suivant :

(6) 'soil management practices' means practices that impact the physical, chemical or biological qualities properties of a soil;

Commentaires concernant l'article 10

Le Luxembourg estime que les dispositions de l'article 10 devraient explicitement garantir la gestion durable des sols qui revêtent une importance particulière pour la production de biomasse alimentaire et non-alimentaire, pour la biodiversité, et pour garantir de bonnes conditions de vie en milieu urbain. En effet, il nous semble primordial de renforcer la protection des sols permettant directement de garantir la sécurité alimentaire des Etats Membres, de protéger la biodiversité et de garantir des conditions de vies acceptables au sein des villes, y inclus dans le cadre de l'adaptation et de la résilience aux effets du changement climatique.

Afin de mieux protéger les sols qui revêtent une importance particulière, il convient d'éviter l'artificialisation des surfaces en recourant en premier lieu aux espaces artificialisés sous-, voire non exploités, comme p.ex. des friches industrielles et urbaines.

Pour ce qui précède, le Luxembourg propose les amendements suivants :

Art. 10 Sustainable soil management

(1) Member states shall ensure the preservation of the capacity of soils as a whole to provide all necessary ecosystem services for future generations. Member states shall seek, without prejudice to other ecosystem services, to protect with priority soils of high importance for:

- a) food and biomass production;*
- b) biodiversity support;*
- c) acceptable living conditions within artificial land areas.*

Member states shall seek to promote the development of brownfields and other unused artificial land in order to avoid land take.

~~(1)~~ *(2) 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:*

(...)

Commentaires concernant l'article 11

Alors que le Luxembourg soutient en principe la proposition de la Commission à l'article 11, nous estimons toutefois que ledit article pourrait être peaufiné davantage afin de mieux répondre aux objectifs de la proposition de directive. Ainsi, le Luxembourg considère qu'à part du « *land take* », d'autres changements d'usage peuvent également affecter la santé des sols. Pour cette raison, et afin de faciliter la cohérence entre la présente proposition de directive et le Règlement (UE) 2018/841, le Luxembourg propose de remplacer à l'art. 11 le terme de « *land take* » par celui de « *land use change* », tout en y introduisant le concept d'artificialisation des sols tel que proposé dans nos commentaires écrits concernant le cluster 2.

Art. 11 *Mitigation principles for soil artificialisation induced by land use change* ~~Land take mitigation principles~~

Member States shall ensure that the following principles are respected in case of land use change ~~take~~:

(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 soil artificialisation induced by land use change ~~take~~ to the extent possible and

(ii) selecting areas where the loss of ecosystem services would be minimized and

(iii) ~~performing the land take in a way that minimizes the negative impact on soil;~~ minimizing the impact of soil artificialisation induced by land use change

(...)

Commentaires concernant l'article 17

Le Luxembourg estime que le langage de l'art. 17 en l'état soit trop vague, et que les possibilités de financement des obligations et des mesures prévues par la directive devraient être clarifiées ; soit à l'art. 17, soit ailleurs.

Commentaires concernant les articles 18 et 19

Le Luxembourg souhaite préciser que le suivi (« *monitoring* »), ainsi que les données et les informations qui en résultent, sont des données environnementales d'intérêt public. Enfin, il pourrait s'avérer utile de préciser la notion de « *trend analysis* » dans le cadre de l'art. 18.1, b).

NETHERLANDS

WRITTEN COMMENTS

Cluster 4

Definitions (art. 3 (5)(6)(7)(19)(22)(25))

We propose to bring this definition in line with the definition from the Aarhus convention.

The definition would then read as follows:

(19) the public concerned” means the public affected or likely to be affected by, or having an interest in, the decision-making procedures related to the implementation of the obligations under this Directive; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

‘Geographically explicit’ means referenced but not necessarily stored.

We propose to alter the wording of this definition as follows: **(25)** ‘geographically explicit’ means information referenced in a manner that permits it to be mapped and localized with specific precision and accuracy.

Sustainable soil management art. 10

Questions regarding use of pesticides (art. 10, complete article)

Prevention. As the Commission points out in their proposal the soils in the EU are in poor health. One of the reasons for this is the continuing use of pesticides and chemicals. How can member states take measures to improve the soil health and sustainable soil management when pesticides and many chemicals can still be used by farmers and industrial companies? How does the Commission reflect on this?

Ubiquitous pollution (diffuse). The challenges posed by ubiquitous pollution by substances, such as PFAS, clarify this point. These cases naturally find their place in article 10, since this article treats sustainable soil management, whereas article 11 exclusively covers sites contaminated by Point source.

Art. 10.part a.I

Regeneration

We propose that regeneration practices are only implemented in situations where the soil is not considered healthy and where not implementing regeneration practices compromises the intended type of land use. Soils should be 'fit for function' so regeneration measures might not be necessary for every type of soil or every type of land use. Regeneration measures should therefore be differentiated according to the intended type of soil and type of land use.

Please add the sentence:

'Regeneration is only necessary in situations where soil health compromises the intended type of land use. Soils should be 'fit for function'. Regeneration measures should therefore be differentiated according to the intended type of soil and type of land use.' Additionally, implementing regeneration measures is only effective if contamination of the soil no longer takes place. Preventing soil degradation is an important step that has to take place, before regeneration measures can have probable effect. We therefore propose that this article is broadened to include preventing soil degradation by reducing the emissions of unhealthy substances to soil, including industrial emissions and agricultural emissions.

Art. 10 part 1 & 3

Tailormade sustainable soil management

Soil management practices are context specific, depending on land use, climate, soil types. It is just as important that when the right practices are chosen they are also properly implemented. A mix of actions is needed to ensure that the right practices are applied correctly, including awareness raising, knowledge and competences, (financial) incentives and obligations. Therefore discretionary policy is needed for tailormade soil management.

Please add the sentence:

'Since a specific mix of sustainable soil management actions is necessary for the type of soil, and type of land use, member states do have certain room for tailormade policy.'

Art.10 part 1

Sustainable excavation and re-use of soil

The principles for sustainable soil management are potentially conflicting with the principles for sustainable excavation, earth-moving and circular re-use of soil. Discretionary policy is essential to create the necessary room for manoeuvre.

Please add the sentence:

'Member States may set up and execute their own sustainable and responsible means of re-use of excavated soil. This is, because excavation and re-use of soil for watermanagement, climate adaptation, energy-transition, agriculture and sustainable urban development are extremely relevant and necessary.'

Art. 10 & Annex III

The principles for sustainable soil management are mainly focused on farmland. The principles should take into account all soils (urban, industrial etc.). The principles should for instance also focus on soil protection for potentially soil polluting activities. Please explain how soils can become healthy without this source- and prevention policy.

Land take mitigation principles art. 11

Could you please clarify because for us it is unclear whether in article 11 the assessment of soil land take and loss of soil capacity (degradation) should be considered per plot, per soil district or per Member State?

As we understand it this article details principles that should be followed when natural or semi-natural land is converted into artificial land.

Although the Netherlands supports the principle that loss of ecosystem services should be avoided as much as possible, we also have to deal with the reality. The Netherlands has a growing population, a strong economy and is – like many other member states - in the middle of an energy transition. If we'd have to accommodate or compensate all these activities on the existing brown fields, we'd have to create very densely populated cities and run the risk that every open and green space in cities will be used to build on, thus creating unsustainable and unhealthy cities.

For the Netherlands the proposed wording of article 11b is too challenging. We propose the deletion of article 11(b): by doing so compensation is no longer a requirement. Also we'd like to point out that this article concerns spatial planning which falls outside the scope of article 191(1) of the treaty of the functioning of the EU.

In addition we propose that the definition of semi-natural and artificial land will be made clearer. See our written comments on cluster 2:

'semi-natural land' means an area where ecological assemblages have been substantially modified in their composition, balance or function by human activities, but maintain potentially high value in terms of biodiversity and the ecosystem services it provides; Parks, gardens, sports fields and any open space in cities, towns and villages that has not been built on and is not sealed, qualify as semi-natural land.

'artificial land' means land used as a platform for constructions and infrastructure (not dikes) or as a direct source of raw material or as archive for historic patrimony at the expense of the capacity of soils to provide other ecosystem services;

And we propose to monitor land take on such a detailed level that small parks and gardens will qualify as green and not as land take. ANNEX I, part D.

Finally, we want to point out that if the monitoring of land take needs to be sufficiently detailed to register whether the principles laid down in article 11 are followed, or not. This would put an extra administrative burden on member states.

ANNEX III and IV

We have not have enough time to fully investigate ANNEX III and IV. We look forward to the planned technical meeting after which we can finish our assessment of these ANNEXs. Some parts, related to specific articles, have been investigated. The remarks and questions regarding those aspects are mentioned in the previous texts, describing the articles.

Reporting by member states art. 18

In this article you set the member states a challenging task: to complete the first report as detailed in section 1(a-d). To achieve this, member states would have to have completed the setup of the monitoring framework, analyzed the first monitoring samples, published the results, taking adequate measures and filed all in a report. We find this too challenging and request for a longer period for the first report.

In our written comments on articles 4 and 5, we have questioned the added benefit of soil districts and have proposed to leave it to the member states themselves as to how to set up the monitoring framework as long as it is based on the descriptors, indicators and criteria set out in ANNEX I. Following this comment, we propose to delete sections (3)(a) and (3)(b) of article 18.

Information to the public art. 19

This article states that the results of soil assessment must be made public. Depending of the abstraction level this information can contain privacy data. We propose to add in this article that the publication of the results of soil assessment should be in line with the regulation on data protection (EU 2016/679).

Exercise of delegation art. 20

In general the Netherlands is not in favour of giving delegated Acts that are not restricted in time.

Therefor we propose to insert the obligation to evaluate the exercise of the delegated Act and to limit the delegated Act to five years with the possibility of tacit extension for the same period. The EP or the Council can state not to agree with a new extension.

Additionally, rather than delegated acts, it would be favourable if the commission published technical guidance to adapt the list of risk reduction measures and the requirements for site-specific risk assessment to scientific and technical progress.

Union financing art. 17

The Netherlands would like to point out that financial programs will have to fit within the new MFF.

Access to justice art. 22

This article is superfluous. We propose the deletion of this article. The access to justice is already regulated in the Treaty of Aarhus and the Convention for the Protection of Human Rights and Fundamental Freedoms. It's the responsibility of the Member States to ensure that citizens and non-governmental organizations have access to their courts. The Netherlands attach importance to a good implementation of the Treaty of Aarhus and the access to the courts is ensured according to this Treaty.

Furthermore, a soil health assessment does not lead to direct obligations for the owner of the land. Only eventual subsequent measures aimed at achieving sustainable soil management and improving the soil health, will lead to direct obligations for land owners.

Finally we propose to reword the first sentence of the article as follows:

Member States shall ensure that members of the public concerned, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities.

Penalties art. 23

The Netherlands supports the principle that penalties are instrumental to achieving the goals of this directive. However, we feel that Directive 2008/99/EC provides sufficient guarantees that member states will take adequate action when land owners do not act in line with the regulations for soil management.

Evaluation and review art. 24

The Netherlands feels that an evaluation six years after the Directive comes into force, would be too soon. You would only have the results of the first monitoring and soil improves slowly.

Transposition art. 25

We propose a period of three years for the transposition: the period of two years is too short.



DENMARK

December 4th 2023

Article adjustment on the proposal for a Directive on Soil Monitoring and Resilience (Soil Monitoring Law) for the WPE-meeting on November 30th

	Commission proposal	DA proposal	Comments
Articles			
Article 10, 1	Member States shall ensure that the process of elaboration of the practices referred to in the first subparagraph is open, inclusive and effective and that the public concerned, in particular landowners and managers, are involved and are given early and effective opportunities to participate in their elaboration.	Member States shall ensure that the process of elaboration of the practices referred to in the first subparagraph is open, inclusive and effective and that the public concerned, in particular landowners and managers, are involved and are given early and effective opportunities to participate in their elaboration.	<p>In our view, current administrative practices in Denmark are already “open, inclusive and effective”. The public, including land owners and land managers, is already included in preparation of national legislation in Denmark and in our national EU procedure, and we therefore question the added value of this paragraph.</p> <p>The Commission is invited to elaborate on how the described process should be carried out in practice if it has to “open, inclusive and effective”.</p>
Article 10, 2	Member States shall ensure easy access to impartial and independent advice on sustainable soil management, training activities and capacity building for soil	Member States shall oversee ensure easy access to impartial and independent advice on	At the WPE meeting on the 30th of November, and in answers to MS questions, the Commission has elaborated on their interpretation of

	managers, landowners and relevant authorities.	sustainable soil management, training activities and capacity building for soil managers, landowners and relevant authorities.	<p>ensuring “easy access to impartial and independent advice”, which included advice given by private actors and research institutions.</p> <p>In Denmark, we already have a well-functioning setup for farmers for impartial and independent advice, training activities, and capacity building, but this is provided by the farmers’ own private, advisory services and independent research institutions. We propose a textual adjustment to paragraph 2, so that the wording “shall ensure” is replaced with “shall oversee”, which more adequately reflects the Commission’s statement on the article. Committing to ensuring impartial advice, would possibly require new legislation and a new governmental set-up on public advisory services in Denmark given that they are currently in the private domain. We find that our current private advisory system in Denmark is sufficient.</p>
Article 10, 4	The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.	The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex III in order to adapt the sustainable soil management principles to take into account scientific and technical progress.	Commission is allowed to adopt delegated acts to amend Annex 3 taking into account scientific and technical developments. This possibility may have far-reaching implications for the Member States' national regulation and the resulting administrative costs, for example with regards to control and enforcement.

			<p>We therefore find it important that there is a precise delimitation of the scope of the delegated acts in the directive. We would like the Commission to address why there is a need for the use of delegated acts in the article – and respond to why this cannot be left for a potential revision of the directive?</p>
Article 11	<p>Member States shall ensure that the following principles are respected in case of land take:</p> <p>(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:</p> <p>(i) reducing the area affected by the land take to the extent possible and</p> <p>(ii) selecting areas where the loss of ecosystem services would be minimized and</p> <p>(iii) performing the land take in a way that minimizes the negative impact on soil;</p> <p>(b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services.</p>	<p>Member States shall ensure that the following principles are respected in case of land take:</p> <p>(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:</p> <p>(i) reducing the area affected by the land take to the extent possible and</p> <p>(ii) selecting areas where the loss of ecosystem services would be minimized and</p> <p>(iii) performing the land take in a way that minimizes the negative impact on soil;</p> <p>(b) compensate as much as possible the loss of soil capacity to provide multiple ecosystem services.</p> <p>When defining the principles referred to in this paragraph, Member States may take into account that the article does not impose additional obligations on renewable energy projects.</p>	<p>It is clear from article 11, that member states shall either avoid, reduce, or compensate for land take that affects the capacity of the soil to provide multiple ecosystem services. However, we would like the Commission to clarify how member states shall conduct this assessment.</p> <p>It would be helpful if the Commission could clarify what types of land take are included by the article. We would also like the Commission to elaborate on how the principle of avoiding, reducing, or compensating “as much as possible” should be interpreted and give examples of how the article can be implemented in practice.</p> <p>Specifically, it is important for Denmark that renewable energy projects, such as solar cells and wind turbines, are not subject to strict regulations on land take and soil</p>

			sealing. These technologies are absolutely central in the fulfillment of the European Green Deal and the Danish government's ambitions to reduce greenhouse gas emissions. We therefore suggest that the article should not impose additional obligations on renewable energy projects.
Article 17	Given the priority inherently attached to the establishment of soil monitoring and sustainable management and regeneration of soils, the implementation of this Directive shall be supported by existing Union financial programmes in accordance with their applicable rules and conditions.	Given the priority inherently attached to the establishment of soil monitoring and sustainable management and regeneration of soils, the implementation of this Directive shall be supported by existing Union financial programmes in accordance with their applicable rules and conditions.	Denmark does not see the need for a separate article on financing in EU environmental regulation and would favor the deletion of this article.
Article 18	Member States shall electronically report the following data and information to the Commission and to the EEA every 5 years:	COMMENT ONLY	The Commission is invited to elaborate on the definition of "public sector data". Does the definition include results of soil samples collected by public authorities on privately owned land? Like other member states, we would like Commission to clarify how it will ensure data security.
Article 20	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. 2. The power to adopt delegated acts referred to in Articles 8, 10, 15 and 16 shall be conferred on the Commission for	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. 2. The power to adopt delegated acts referred to in Articles 8, 10 , and 15 and 16 shall be conferred on the Commission for	We prefer that the use of delegated acts may be supplemented by alternative approaches. For instance, the Commission is allowed to adopt delegated acts to amend Annex 3 taking into account scientific and technical developments.

	<p>an indeterminate period of time from the date of entry into force of this Directive.</p> <p>3. The delegation of power referred to in Articles 8, 10, 15 and 16 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.</p> <p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> <p>6. A delegated act adopted pursuant to Articles 8, 10, 15 and 16 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council</p>	<p>an indeterminate period of time from the date of entry into force of this Directive.</p> <p>3. The delegation of power referred to in Articles 8, 10, and 15 and 16 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.</p> <p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> <p>6. A delegated act adopted pursuant to Articles 8, 10, and 15 and 16 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council</p>	<p>This possibility may have far-reaching implications for the Member States' national regulation and the resulting administrative costs, for example with regards to control and enforcement. We therefore find it important that there is a precise delimitation of the scope of the delegated acts in the directive, or alternatively, that the Commission's competence to use delegated acts is deleted in the paragraph. Instead, the adaption of Annex III can be subject to the revision of the entire directive in six years from the date of entry into force.</p>
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	<p>or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.</p>	<p>or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.</p>	
Article 22	<p>Access to justice Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities. Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient.</p>	COMMENT ONLY	<p>In line with other MS, we find it important that the article is coherent with the Aarhus Convention.</p>

	<p>Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary.</p> <p>Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.</p>		
Article 23	<p>1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council, Member States shall lay down the rules on penalties applicable to violations by natural and legal persons, of the national provisions adopted pursuant to this Directive and shall ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.</p>	COMMENT ONLY	<p>In line with other MS, we find it important that it is clarified what type of serious violations will trigger penalties.</p> <p>Further, it is important for Denmark that penalties will not include administrative fines, which is considered unconstitutional.</p>
Annex 3			
Annex 3, I	<p>in case of known disproportionate loss of one or several functions that substantially reduce the soils capacity to provide ecosystem services, apply targeted measures to regenerate those soil functions.</p>	COMMENT ONLY	<p>With regards to annex III, we would like clarity on the extent of the principle (I). It is stated that the member states shall apply targeted measures to regenerate soils in case of known disproportionate loss of one or several</p>

			<p>functions that support ecosystems services.</p> <p>Can the Commission explain the purpose of this article; what is meant by “disproportionate loss”; and the extent to which this is binding for member states?</p>
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Poland's comments
to the draft directive of the European Parliament and of the Council on soil monitoring
and resilience (soil monitoring law) COM(2023) 416

CLUSTER 4

(Chapter III and V) art. 3 (5) (6) (7) (19) (22) (25), art. 10, art. 11, art. 17-27)

- **Definitions**

- PL proposes the following wording of Art. 3 (5):

„5. ‘sustainable soil management’ means soil management practices that maintain or enhance the ecosystem services provided by the soil without impairing the functions enabling those services, ~~or being detrimental to other properties of the environment;~~”

Justification: This proposal is a consequence of the proposal to amend Art. 3 points 3. i.e. taking into account the environmental function of soils (comment reported within Cluster I).

- **Sustainable soil management**

Comments to Annex III – see below.

Justification: Some of the principles does not apply to certain types of land use.

- Proposed amendment to Article 10 (1):

„1. From (OP: please insert the date = ~~4~~ 8 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: (...)

Justification: It is worth noting that Member States should take into account the results of the soil health assessment when developing recommended sustainable soil practices and measures, therefore the list of practices and measures has to be developed after carrying out a soil health assessment in accordance with Article 9 section 1. Due to the fact that this list should be developed after an assessment of the soil condition, we propose to extend the deadline for defining sustainable soil management practices from 4 to 8 years. Due to the fact that PL proposes to perform the first soil tests 6 years after the entry into force of the directive, and the first soil condition assessment 7 years after the entry into force of the directive (both of these proposals were sent in writing as part of the comments to clusters I-III), the list sustainable soil management practices should be developed not earlier than 8 years after the entry into force of the directive.

- **Land take mitigation principles**

- PL comment to art. 11

Due to the competences of Member States in spatial management and forest land management, the provisions in Art. 11 regarding the rules for limiting land take, raise doubts.

- **Union financing**

- PL comment to art. 17:

Pursuant to Art. 17, the implementation of the directive will be supported by existing EU financial programs. It should be emphasized that the implementation of this directive requires additional EU support - a long-term, permanent and stable, separate from other existing funding programs, in particular in the field of soil monitoring.

- **Reporting by Member States**

- Proposed change to Art. 18 (1):

„1. (...) The first reports shall be submitted by ... (OP: please insert date = ~~5~~8 years and 6 months after entry into force of the Directive).”

Justification: The deadline for submitting the first report, indicated in Art. 18 section 1 is too short and we propose extending it to 8 years and six months. The report should only be submitted after the first assessment of the soil condition has been carried out and the practices of sustainable soil management have been established.

- Proposed change to Art. 18 (3 lit c):

“3. Member States shall provide the Commission with online access to the following:

(a) (...);

(b) (...);

(c) the measures and sustainable soil management practices referred to in Article 10 by... (OP: please insert the date = ~~4~~8 years and 3 months after date of entry into force of the Directive).”

Justification: Proposed amendment to Art. 18(3)(c) is a consequence of the changes to the deadlines proposed for Art. 8 (4), art. 9 (1) and art. 10 (1).

- **Penalties and transposition**

PL proposes that there should be no penalty system in force in the first years of implementation of the directive. The evaluation system should be based on the creation of incentives (financial, but not only), education and promotion of good practices, agricultural advisory services, development of new technologies and strengthening their implementation into practice. Therefore, art. 25 (transposition) should contain exception for art. 23 (penalties), which should come into force at least two years after adoption of the other provisions of the directive.

COMMENTS TO ANNEX III

SUSTAINABLE SOIL MANAGEMENT PRINCIPLES

The following principles shall apply:

- (a) avoid leaving soil bare by establishing and maintaining vegetative soil cover, especially during environmentally sensitive periods;
- (b) minimise physical soil disturbance;
- (c) avoid inputs or release of substances into soil that may harm human health or the environment, or degrade soil health;
- (d) ensure that machinery use is adapted to the strength of the soil, and that the number and frequency of operations on soils are limited so that they do not compromise soil health;
- (e) when fertilization is applied, ensure adaptation to the needs of the plant and trees at the given location and in the given period, and to the condition of soil and prioritize circular solutions that enrich the organic content;
- (f) in case of irrigation, maximise efficiency of irrigation systems and irrigation management and ensure that when recycled wastewater is used, the water quality meets the requirements set out in Annex I of Regulation (EU) 2020/741 of the European Parliament and of the Council¹ and when water from other sources is used, it does not degrade soil health;
- (g) ensure soil protection by the creation and maintenance of adequate landscape features at the landscape level;²
- (h) use site-adapted species in the cultivation of crops, plants or trees where this can prevent soil degradation or contribute to improving soil health, also taking into consideration the adaptation to climate change³;
- (i) ensure optimised water levels in organic soils ~~so that to minimize or avoid negative impact~~ on the structure and composition of such soils ~~are not negatively affected~~;⁴
- (j) in the case of crop cultivation, ensure crop rotation and crop diversity, taking into consideration different crop families, root systems, water and nutrient needs, and integrated pest management⁵;
- (k) adapt livestock movement and grazing time, taking into consideration animal types and stocking density, so that soil health is not compromised and the soil's capacity to provide forage is not reduced;
- (l) in case of known disproportionate loss of one or several functions that substantially reduce the soils capacity to provide ecosystem services, apply targeted measures to regenerate those soil functions.

¹ Regulation (EU) 2020/741 of the European Parliament and of the Council of 25 May 2020 on minimum requirements for water reuse (OJ L 177, 5.6.2020, p. 32).

² This principle does not apply to forest soils **and urban soils**.

³ **This principle does not apply to agricultural soils.**

⁴ This principle does not apply to urban soils.

⁵ **This principle does not apply to forest soils and urban soils.**

SWEDEN

Written comments on Cluster 4 following WPE November 30 on Soil Monitoring Law

Following the call for delegations to send written comments after WPE 30 November 2023 Sweden would like to put forward the following comments on the Commission proposal for a Directive on Soil Monitoring and Resilience (SML). Sweden is still analysing the proposal and will thus keep a general scrutiny reservation. Sweden would like to repeat a general need for high flexibility according to national circumstances as well as an exception for land used for military and defence purposes. Sweden has noticed that the proposal is now translated into Swedish and would like to highlight that there is ambiguity in some of the terms used in the original English version as compared with the Swedish version. Sweden is still working on concrete text-proposals for several of the aspects described below.

CLUSTER 4 (CHAPTER III & V)

CHAPTER III

Article 3 Definitions (related to chapter III)

3(5) Sustainable soil management

The definition should be in line with the outcome regarding article 10. Sweden would like to come back to the definitions related to chapters III and V when the outcome is clearer.

3(6) Soil management practices

The definition should be in line with the outcome regarding article 10, see also SE proposal on 3(7) 'Managed soils' below. Sweden would also like to come back to the definitions related to chapters III and V when the outcome is clearer.

3(7) Managed soils

Sweden would like to see a clarification of the definition so that it is more clear what soils are to be considered as managed. To this end, Sweden proposes that 'manages soils' are defined based on practices/activities rather than possible effects of such activities. Preliminary Sweden argues that the activities soil tillage, application of mineral fertilizers and application of pesticides would sufficiently cover the relevant activities that needs to be included. Hence, Sweden proposes that that the definition could read as follows: *'managed soils' means soils where soil tillage, application of mineral fertilizers and application of pesticides are carried out.* Consequently, definition 3(6) 'soil management practices' could be deleted.

3 (22) Regeneration

Sweden would like to come back to the definitions related to chapters III and V when the outcome regarding the articles is clearer.

Article 10 Sustainable soil management (+Annex III & IV)

Sweden agrees with the Commission about the need for a better understanding of soil health across the union. A coherent soil monitoring framework, taking advantage of already ongoing national monitoring, can be a good way forward and is in line with the first overarching objective of the proposed directive. Sweden is hesitant to the second overarching goal of the proposal and to defining common sustainable management principles and regeneration practices in the Directive. When deciding on appropriate measures and methods there is a need for considering several varying conditions such as soil qualities, local climate, weather, timing etc. It is also premature to define national practices and measures before the initial monitoring phase has been conducted and the result has been interpreted. If necessary, sustainable soil management principles can be included after the first evaluation referred to in Article 24.

On WPE 30th of November, the commission made it clear that it is to be legally binding to define sustainable management practices at the latest four years after the date of entry into force of the Directive, and that the list of sustainable management principles in Annex III is also to be legally binding. Due to the complex considerations necessary when managing different areas there must be enough flexibility for the manager to adapt to different circumstances. Sweden is therefore of the opinion that, these provisions should not be legally binding.

Furthermore, it should also be mentioned that Sweden does not agree with the empowerment to the Commission to amend Annex III (art 10.4) through delegates acts. The rationale for the deletion of Article 10(4) is that only non-essential elements of a legislative act can be empowered to the Commission to adopt delegated acts.

Article 11 Land take mitigation principles

Sweden has asked for an assessment by the Council Legal Services on the legal scope for article 11 of the proposed directive, as well as whether the requirements on the member states with regards to monitoring and reporting is proportional. The rationale being that spatial planning is within the national competence of the member states and article 11 is affecting how member states can conduct spatial planning. Reference is made to article 192(2) point b in the treaty of the functioning of the European Union. Sweden is looking forward to the assessment and would like to return to the issue when the Council Legal Services has issued its opinion.

Content-wise, and without pre-judging the assessment by the Council Legal Services, Sweden considers that article 11 needs to be re-evaluated since Sweden considers that this article is

disproportionate. In Sweden we have a net growth of population. In some regions, the increase is particularly large due to the fact that the transition to net zero emissions requires new industrialization in locations with large and reliable access to renewable electricity. All in all, this means that a large number of new homes, but also new industries, infrastructure and other community building are needed. Several EU acts presuppose a strong expansion of e.g. certain type of industry and fossil-free energy production. At the same time a very small part of Sweden's surface is currently built upon. According to Statistics Sweden (SCB) no more than 3 % of the land is built up or landscaped, which makes Sweden a sparsely populated country.

Sweden would like to submit that the current wording, in any case, can also be interpreted in a way that places a disproportionate burden on the member states, among other things linked to the questions described below.

Acknowledging that Sweden have asked for an assessment on the legal scope for article 11, Sweden would also like to point out that some of the terminology in article 11 is not entirely clear. Specifically, the text “*as much as technically and economically possible*” (11 (a)) and “*to the extent possible*” (11(b)) is not sufficiently clear in our understanding.

Furthermore, Sweden considers that the difference between “*artificial land*” and “*semi- natural land*” is not clear enough, which may lead to situations where it is difficult to determine land type. Sweden would like to ask for a clarification from the Commission in this regard.

Sweden also believes that more guidance is needed from the Commission on how the following concepts should be understood: “*The loss of the capacity of the soil to provide multiple ecosystem services (...)*” and “*selecting areas where the loss of ecosystem services would be minimized*”. Otherwise, Sweden considers that there is a risk that trade-offs will be difficult to assess in a transparent manner when implementing article 11.

CHAPTER V

Article 3 Definitions (related to chapter V)

Article 17 Union financing

Sweden would like the Commission to clarify Article 17. During the last presentation, COM said that CAP is one of the financial frameworks. CAP is based on agricultural land, but the monitoring framework is much wider than agricultural land. Agricultural land covers only 8 percent of Sweden.

Sweden is hesitant to the word “shall” in the Article and does not see that soil monitoring law should prejudice the process of the Multiannual Financial Framework or other legislative processes.

Article 18 Reporting by member states

With regards to holding data in databases, Sweden would like a clarification on whether soil samples could be done without the consent of landowners? Sweden fears that such a situation could risk affecting the public's trust in governmental agencies and researchers in a negative way. Sweden wants to ensure that soil samples in databases cannot be traced back to individual landowners. Hence, available data need to be aggregated in some way. Furthermore, Sweden is reluctant to transmit data from individual soil samples into non-national databases.

Regarding article 18.1 c(i) Sweden seeks clarification if the reporting should include sustainable soil management *practices* or *principles*. We understand that article 10 regulates that MS should gradually implement sustainable soil management *practices* and thus possible reporting should focus on the implementing om those practices.

Article 19 Information to the public

Regarding article 19 'Information to the public' and article 22 'Access to justice' Sweden could consider to move the relevant elements in article 19 and 22 into one or several recitals with a reference to the Aarhus Convention, similar to how this issue has been dealt with in other recent EU-legislation processes.

As pointed out above, Sweden sees the need for a general exception for land used for military and defence purposes. In any case, sensitive data concerning soil on land used for military and defence purposes must be exempted from any reporting requirements.

CHAPTER VI & VII

Chapter VI

Article 20 Exercise of delegation

Sweden is of the opinion that delegated or implementing acts should not lead to more strict requirements for the member states. Reference is made for example to the empowerment to the Commission in article 10.4 to amend annex III.

In Article 20, paras 2, 3 and 6, reference is made to Articles 8, 10, 15 and 16 and the power to adopt delegated acts referred to in those Articles. However, it seems that the reference to Article 16 in Article 20 is erroneous as Article 16 does not confer a power to adopt delegated acts on the Commission. Instead, pursuant to Article 16(5), the Commission shall adopt implementing acts.

Chapter VII

Article 22 Access to justice

See text under article 19.

Article 23 Penalties

In general Sweden agrees that common rules on penalties and sanctions within the EU can have a positive effect for promoting environmental protection and achieve equivalent conditions between member states. However, in this directive Sweden is hesitant to whether it is the most appropriate way forward). The directive should not restrict member states to certain legal actions but rather provide for some flexibility with regard to the implementation. This includes deciding on methods for calculating economic sanctions without being forced to use certain parameters such as turnover of legal persons.

Sweden would like a more detailed clarification on what actions should be covered by penalties and why.

Article 24 Evaluation and review

Sweden asks for a clarification on how the evaluation of the directive, including the assessment of the need to amend its provisions, should be conducted.