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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
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Subject:	Soil Monitoring Directive: WPE on 21 February 2025 – Addendum to the Presidency steering note

With a view to the WPE on 21 February 2025 delegations will find attached an Addendum to the Presidency steering note.

Addendum

PRESIDENCY STEERING NOTE

Working Party on the Environment

21 February 2025

Soil Monitoring and Resilience Directive (Soil Monitoring Law) - SML

Additional issues discussed at the ITM on 19 February are presented in this Addendum to the Steering Note WK 2147/2025 INIT.

Due to the late publication and already loaded agenda of the WPE meeting on 21 February we do not plan any long discussion round on these issues. Delegations will be invited to provide their initial feedback during the meeting, if possible, and send more detailed feedback in writing after the meeting.

1. EP proposal on the support of the Commission (new Article 23a, rows 283a-283u) to cover the EP amendments in rows 111f-g, 132a and 294c-d

Suggested wording of Article 23a, related recitals 52a, 52b and proposed new recital is presented below:

Article 23a

Support by the Commission

1. The Commission shall provide Member States with the necessary support, assistance and capacity building in order to ~~enable~~ **help** them to carry out their obligations under this Directive. In particular, the Commission shall ~~issue~~, in cooperation with the Member States, **draw up** documents **and develop** and scientific tools that may be used by Member States to facilitate them to:

(a) establish a monitoring framework pursuant to Article 6 and determine their sampling points pursuant to Article 8(1) and (1a) and Part A.1 of Annex II ;

(b) set sustainable target values and operational trigger values for the soil descriptors pursuant to Article 7(2) and Parts A, B and C as relevant of Annex I;

(c) determine their list of organic contaminants to be monitored pursuant to Article 7(3) and Part B of Annex I ~~with the possibility to take into account the indicative watch list of soil contaminants to be established by the Commission pursuant to Article 7(5a);~~

(d) assess the areas not at risk of salinization that can be excluded from the measurements of electrical conductivity pursuant to Article 8(2) and Part A of Annex I;

(e) carry out in-situ sampling of soil descriptors pursuant to Article 8(2) and Part A.2 of Annex II;

(f) determine the values of the soil sealing and soil ~~destruction~~ **removal** indicators pursuant to Article 8(2b) and Part C of Annex II;

(g) determine or estimate the values of the soil descriptors pursuant to Article 8(3) and Part B of Annex II;

(h) identify and assess the critical loss of ecosystem services pursuant to Article 9(3) subparagraph 1 and the impact of soil sealing and soil ~~destruction~~ **removal** on the loss of

(i) identify the potentially contaminated sites and to lay down a list of potentially contaminating activities pursuant to Article 13; and

(j) lay down the specific methodology for assessing the site specific risks of contaminated sites, taking into account common practices, methodologies and toxicological data pursuant to Article 15.

The documents and scientific tools referred to in the first subparagraph shall be provided for, as regards:

- (i) point a), within 1 year after the entry into force of this Directive;
- (ii) points b), c), e) and j), within 18 months after the entry into force of this Directive;
- (iii) point i), within 2 years after the entry into force of this Directive;
- (iv) points d), f) and g), within 3 years after the entry into force of this Directive
- (v) point h), within 4 years after the entry into force of this Directive.

~~Those documents and scientific tools may take the form of guidelines.~~

2. The Commission shall organize regular exchanges of information, experience and best practices between Member States and, where relevant, other ~~parties~~ **stakeholders** on the application of this Directive ~~and the communication to the public of the results generated by the monitoring and the soil health assessments~~. The first exchange shall take place ~~by...~~ **[within three months after from the entry into force of this Directive]**.

The Commission shall publish the results of the exchanges of information, experience and best practices ~~on these and other relevant topics~~, and where relevant, provide recommendations or guidelines to Member States.

3. Member States shall ensure, where appropriate, that neighbouring soil districts in which there are transboundary effects on soil, or with comparable soil type and land use across the border, cooperate with each other to exchange best practices, and shall ensure that a coherent approach is taken in the application of this Directive.

Recitals:

(52a) ~~In order to provide to support to Member States to in carrying out their obligations under this Directive, the Commission should provide for~~ **draw up and develop scientific tools and documents and scientific tools analysing, synthesizing and documenting, in an efficient and coordinated way, including** possible methodologies and procedures that could be applied. ~~These Those non-binding documents and scientific tools would provide in due time essential information for Member States, while ensuring the flexibility to continue using~~ **build on** methodologies and procedures already in place. The documents and scientific tools should be ~~established~~ **drawn up and developed** in cooperation with the Member States **and other Stakeholders where relevant.** ~~These documents and scientific tools should be complemented with the necessary assistance and capacity building.~~

New recital:

(new) The Commission should provide to Member States the necessary capacity building, assistance and support multilateral harmonisation of methods and thereby eliminate existing data gaps and workflow bottlenecks by sharing expertise. To that end, the Commission shall build on existing mechanisms at Union and international level, including the Soil BON initiative. The Commission shall support cross-border cooperation between Member States to ensure a harmonised approach to soil monitoring is taken and that there is a level playing field between neighbouring soil districts.

(52b) In addition to the documents and scientific tools, the Commission should organize regular exchanges of information, experience and best practices on the application of this Directive. This forum could, in addition ~~to the practical implementation of this Directive,~~ be used to discuss ~~for example~~ also the use of traffic light systems for the communication to the public of the results of the assessments of soil health; ~~the sustainable management of soil~~ contamination other than anthropogenic point source contamination; the application of the hierarchy of responsibility defining the responsible party or parties for the management of contaminated sites; orphan site management; remediation techniques for contaminated sites; the identification and evaluation of natural and anthropogenic background levels; ~~different~~ approaches for the identification of areas where individual criteria for healthy soil condition are not satisfied; the quality management system practices for laboratories; **and** the soil sealing and soil ~~destruction removal~~ mitigation principles.

The EP expressed inter alia the following views regarding the proposed amendments:

- Article 23a(2) – the EP believes that the amended paragraph 2 covers rows 294c-294d (EUSO Forum);
- [new] Article 23a(3) – additional paragraph is meant to cover the EP's rows 111f-g; the EP believes that the proposed wording gives more flexibility for the MS (insertion of the words: *where appropriate*);

- the proposed new recital is meant to cover row 132a.

Question 10: The MS are invited to indicate the amendments they cannot accept.

2. Proposal on strengthened communication of threshold values / target and trigger values

The EP initially insisted on the Commission's approval of the threshold values established by Member States. During the discussions the EP indicated its openness to limit this obligation to a strengthened communication between MS and the Commission. The EP wants to reinforce the role of the Commission in evaluation clause by introducing new obligations in Article 25(2) and in Article 24, that the Member States communicate to the Commission the threshold values, and respectively that the Commission evaluate the approaches in the evaluation report under Article 24. The issue was discussed at the WPE on 4 December 2004, but since then a new text proposal was put forward by the Commission.

The compromise proposal is presented below:

*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. **The communication of the threshold values for soil descriptors in Annex I shall be accompanied by the scientific justification and evidence on which they are based.***

Article 24

*1. [...] This evaluation shall take into account, inter alia, the following element
[...]*

(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:

[...]

(iv) the sustainable target values and operational trigger values for the soil descriptors pursuant to Article 7(2) and Parts A, B and C as relevant of Annex I taking into account, inter alia, the objective to ensure a level playing field within internal market;

Question 11: The MS are invited to indicate the amendments they cannot accept.

3. Other issues:

a. Article 1(1), row 69, new text proposal:

*The objective of the Directive is to put in place a solid and coherent soil monitoring framework for all soils across the Union, to continuously improve soil health in the Union, maintain soils in healthy condition **and prevent** and tackle all aspects of soil degradation, with the view to achieve healthy soils by 2050 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. **This Directive, therefore, establishes a framework within which Member States are required to put in place measures that are technically and economically feasible, with a view to achieving healthy soils by 2050.***

The EP indicated that the prevention aspect is a key issue for them in row 69. At the same time the EP showed openness to accept aspirational nature of 2050 objective.

b. Article 14(2), row 219a, modified EP proposal on areas with drinking water extraction:

*Potentially contaminated sites located in areas used for the abstraction of water for human consumption shall be ~~prioritised for~~ **taken into account in the prioritisation for the purpose of** soil investigation.*

c. Recital 48b, row 58b,: modified EP proposal on microplastics:

*(48b) ~~Substances such as persistent organic pollutants, materials~~ **Microplastics and particles, including microplastics or** nanoplastics, **are substances which can** pose a ~~clear~~ risk to soil health, ~~but~~ **and** also to essential activities such as ~~the development of agriculture~~ **agricultural production**. Their presence in soils can have implications for soil fertility, thereby compromising the health and healthy development of crops. It is therefore essential that this Directive ~~provide for a framework for~~ **allows the inclusion of** both ~~substances and materials to be included~~ in the monitoring of soil contaminants. ~~,and for the establishment of environmental quality standards and a set of measures to prevent and remediate soil contamination from known and emerging threats, where appropriate.~~*

d. Technical adaptations related to the amendments in Article 10 and Article 11 proposed in the Steering Note of 17 February

The amendments in Article 10 and Article 11 presented in the Steering Note (WK 9180 2024 INIT) would require certain technical adaptations of related provisions in Article 18 and Article 24. The adaptations are presented and explained below:

Article 18

Modification of row 244 as follows:

Article 18(1), first subparagraph, point (c)(i)

- (i) ~~implementing sustainable soil management principles~~ **the support to soil resilience** in accordance with Article 10;

Explanation : if new wording of article 10 on support to soil resilience is retained there is a need to align the wording of article 18 accordingly. Sustainable soil management principles would no longer be mentioned in article 10; Article 10 would focus only on support to soil resilience.

Deletion of entire row 252, Article 18(3), c)

~~((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)).~~

Explanation : if new wording of article 10 is retained, the reporting under article 18(1) , point c) i) is sufficient. Article 18(3) c) was proposed in COM's proposal because Article 10 requested Member State to adopt sustainable soil management practices based on the SSM principles. This obligation was scheduled to kick in 4 years after the entry into force of the directive (hence after transposition deadline).

Article 24

Addition after Article 24(1), point (d), a new point da) reading as follows

da) An analysis of the effectiveness of the measures taken by Member States to support soil resilience

Explanation: in COM's proposal, article 10.3 contains an obligation on MS to regularly assess the effectiveness of the measures taken in and, where relevant, review and revise those measures, taking into account the soil health monitoring and assessment referred to in Articles 6 to 9.

In case revised wording of art 10 is retained, this obligation would no longer be in article 10. However, Council PCY indicated that it should either be reintroduced in art 10 or put as an element for the evaluation of the directive. This latter option is proposed as this is an important information to be taken into account when evaluating the directive (and possibly the need to review it).

Addition of a new point f) in article 24(1) reading as follows

f) an analysis of the contribution of the Directive towards no net land take by 2050

Explanation: while the SML does not have any objective on no net land take by 2050, it is expected that the SML will make a contribution towards this EU political objective. The evaluation of the Directive could assess the contribution of the SML to reach that political objective and would also echo the staged approach of the SML on land take as explained in recital 29a GA.

Question 13: The MS are invited to indicate the amendments they cannot accept.