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From: General Secretariat of the Council
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Subject: Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)
- Policy debate

1. On 5 July 2023, the Commission adopted a proposal for a Directive on Soil Monitoring and Resilience (Soil Monitoring Law), aiming to put the EU on a pathway to healthy soils by 2050. The proposal makes sustainable soil management obligatory and addresses situations of unacceptable health and environment risks due to soil contamination. It is part of a larger legislative package on “Ensuring resilient and sustainable use of EU’s natural resources”. The proposal is in line with the 2021 EU Soil Strategy, an important component of the European Green Deal and of the EU Biodiversity Strategy for 2030 for tackling the climate and biodiversity crises.

2. The Commission presented its legislative proposal and the accompanying impact assessment at the informal videoconference of the member of the Working Party on Environment (WPE) on 27 July and the WPE on 6 October. The WPE examined the proposal in detail over the course of another five meetings. Based on these discussions and written comments submitted by delegations, the Presidency is preparing a first compromise text, to be published by the end of year. To make further progress on the file, two issues requiring political guidance from the Council were identified.
3. In order to guide the discussion at the forthcoming meeting of the Council (Environment) on 18 December 2023, the Presidency has prepared a background paper and questions, as set out in the Annex to this note.
4. The Permanent Representatives Committee is invited to take note of the background paper and questions and to forward them to the Council for the abovementioned policy debate.

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

- Presidency note with questions for Ministers-

Soil is an essential resource to life. It is the base for our ecosystems, as well as for economic and social developments and activities. Healthy soils produce food, improve water quality and store carbon. They are needed for resilient ecosystems and human health. Unhealthy soils put at risk human health, the environment, climate, economy and society, reducing their resilience to extreme weather events such as floods and droughts and challenging their ability to produce safe food, water quality and biomass as well as to increase carbon sequestration.

Scientific evidence shows that EU soils are facing severe threats such as erosion, compaction, desertification, salinization, pollution, loss of biodiversity and organic matter decline. Land take and soil sealing are also increasing. Soil degradation has already costed billions of euros. in the EU and is estimated to exceed €50 billion per year due to the loss of essential services they provide.

Considering this situation, on 17 November 2021 the European Commission presented the EU Soil Strategy for 2030¹, as a part of the EU Biodiversity Strategy for 2030², one of the central elements of the European Green Deal. The EU Soil Strategy aims to increase the soil carbon, combat desertification, restore degraded land and contaminated soils, and to ensure that by 2050 all soil ecosystems are in a healthy condition. The Strategy proposes voluntary and legally binding measures in order to achieve these objectives. In December 2021 the Environment Council held an exchange of views on the Strategy.

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At global level, soil has also been recognised as an important resource that must be preserved. The United Nations Convention to Combat Desertification, the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity underline the relevance of soils to achieve their specific objectives. Soils play a key role in reaching the Paris Agreement goals, both on adaptation and mitigation, and are an essential pillar to achieve climate neutrality.

Furthermore, the recent Kunming-Montreal Global Biodiversity Framework includes restoring, maintaining, and enhancing soil health as a target.

On 5 July 2023 the European Commission adopted a proposal for a directive on soil monitoring and resilience (Soil Monitoring Law). This proposal aims to have all EU soils in a healthy condition by 2050. The proposal adopts a gradual approach, focusing first on the monitoring and assessment of soil health and allowing for the review of the Directive later on to accelerate, if necessary, progress towards achieving and maintaining soils in a healthy condition by 2050.

The proposal sets a monitoring framework for all soils across the EU that will help to close the knowledge gap on soils. Some Member States already have monitoring systems for soil health, but in others soil data is not available. The proposal defines an integrated EU level monitoring framework. The framework aims to obtain comparable soil data that will allow to determine the state of the soil health regarding their capacity for providing ecosystem services and to design sustainable management principles that will maintain the soils in a healthy condition. The burden of monitoring the state of soil will be shared between the Commission and the Member States. The Commission will support the Member States by reinforcing its current EU soil sampling programme (LUCAS Soils), and by developing remote sensing tools under Copernicus programme.

A set of soil descriptors are established in the proposal to be measured or estimated in order to have a common definition of soil health. For some of these descriptors, criteria for healthy soil condition are set at EU level. For some other descriptors Member States should be able to adapt the criteria based on the regional or local conditions as well as to define the criteria for other soil descriptors for which common criteria at EU level cannot be established at this stage.

The proposal also tackles soil contamination, requiring Member States to identify and investigate potentially contaminated sites. Once the investigation has been performed, for the sites identified as contaminated sites, appropriate risks reduction measures shall be adopted to lower the risk to an acceptable level for human health and the environment. The remediation measures shall be financed by those responsible for contamination, in accordance with the polluter pays principle.

Under the Spanish Presidency, the proposal has been discussed at six meetings of the Working Party on the Environment (WPE), where all the Member States have expressed general support for the objectives of the proposal. Most delegations have recognized the need to fill the existing gap at EU level regarding soil legislation and acknowledge the complementarity of the proposal with other pieces of EU legislation. However, a number of challenges have been identified during the detailed examination of the text.

Technical aspects of the soil monitoring framework, such as the criteria and methodology of the soil descriptors, have emerged as an issue that needs further clarification and discussion. It has also been pointed out that the definitions are of great importance to guarantee the effective and harmonised implementation of the directive and that a common understanding and alignment with existing EU legislation is necessary.

Member States have also stressed that flexibility is key to take into account specific national and regional characteristics and to enable adaptation of the existing national monitoring systems to the provisions of the proposal.

In light of the above and with the aim of providing guidance for the future work and be able to take the negotiations forward, the Presidency has identified two topics to be addressed by the Environmental Council on 18 December 2023. Ministers are invited to exchange views on the following questions:

- *Having in mind the current gap of knowledge on soils at EU level, how do you consider that the proposed soil monitoring framework will help more to improve the health of the EU soils within the planned timeline?*

- *Regarding soil contamination, do you consider the ambition of the proposal and the proposed risk-based approach adequate to help to create a non-toxic environment by 2050? How would you like to have it improved?*
