

Communication

to the European Commission, the Council of the EU and the European Parliament
pursuant to Art. 23f para. 4 B-VG

of the EU Committee of the Federal Council

of 4 October 2023

COM(2023) 416 final

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

On 5 July 2023, the EU Commission presented the legislative proposal for a directive on soil monitoring and resilience, the so-called "Soil Monitoring Law". The main objective of the proposal is to bring soils in the EU into a healthy state. Currently, an estimated 60% to 70% of soils in the EU are in an unhealthy state. To improve soil health, the legislative proposal establishes, through a step-by-step approach, as a first step, a coherent soil monitoring framework for all soils across the EU, which will provide data on soil health in all Member States. This data will be based on a common definition of what constitutes a healthy soil and will support the sustainable management of soils. Through this soil monitoring framework, data and information will be collected and made available, which in a next step will be necessary for the definition of the right measures or for further policy making in soil protection.

The EU Committee of the Bundesrat welcomes all efforts to ensure an optimal supply of food, energy and raw materials to society and the economy with reference to soil, which includes good and coordinated soil management. The EU Committee of the Bundesrat particularly welcomes the Commission's step-by-step approach to

improving soil health. It is important to take into account the specific regional conditions and challenges of a legal, financial, administrative and temporal nature in the Member States in the legislative process, so that the measures provided for in the proposed Directive can be implemented in all countries, in Austria primarily at the level of the federal provinces.

Furthermore, the Federal Council is in favour of using the power to issue delegated acts by the European Commission in the present legislative proposal with restraint and to restrict it only to non-essential provisions in the project in question.

Soil is a vital, limited, non-renewable and irreplaceable resource that is of crucial importance for the economy, the environment and society. Soils vary in their properties, nutrient content and ecosystem services and according to region and use. To optimise soil health and productivity, a balance between setting specific limits and recognising the different characteristics of soils is crucial. It is therefore important to allow flexibility in the implementation of soil management strategies in agricultural soils.

Article 9 of the proposed Directive provides that soils that do not meet only one of the criteria set out in the proposal are already to be considered unhealthy. For this purpose, individual factors are singled out and the condition of a soil is assessed on the basis of these parameters. Only "healthy" and "unhealthy" are differentiated. However, the soil system and its assessment are much more complex. Relying on a single criterion to assess soil health overlooks the complexity of the soil and does not provide a comprehensive picture and reliable assessment. To provide a more accurate assessment of soil health, this approach should be replaced by a soil health index. This would include several indicators and reflect the overall health and quality of the soil, taking into account its physical, chemical and biological properties.

The risk-based approach in Article 12 to identify, investigate and assess the risk of contaminated or potentially contaminated sites (as opposed to the hazard-based approach) is the right way to manage soil contamination. Decades of experience clearly show us that not all contamination has to prevent or hinder potential after-use. In any case, it still has to be examined to what extent the existing contaminated site regime in Austria is compatible with the new Directive. In addition, another proven instrument is established in the Industrial Emissions Directive with the reports on the initial state.

The proposed Directive also provides in Article 22 that Member States shall ensure that members of the public who have a sufficient interest or claim an infringement have access, in accordance with national law, to a judicial review procedure to challenge the substantive or procedural legality of the soil health assessment, the measures taken pursuant to this Directive or any omissions by the competent authorities. The EU Committee of the Bundesrat refers to the uniform statement of the Länder pursuant to Art. 23d para. 2 B-VG of 2 October 2023 as well as to the statement of the Vorarlberg Landtag pursuant to Art. 23g para. 3 B-VG of 11 September 2023 on the present legislative proposal, according to which this obligation already derives from Article 9 para. 3 of the Aarhus Convention, which provides for legal protection in connection with environmental information requests, legal protection for members of the public concerned against decisions in public participation procedures and legal protection against acts and omissions by private persons and public authorities. It must therefore be examined whether Art. 22 in the present draft can be restricted in accordance with the powers of action that can be derived from the Aarhus Convention and without restricting the legal protection of the public. This is particularly the case since, apart from monitoring measures, the Directive does not standardise any measures or mandatory targets that could be sued for.

Last but not least, Article 23 provides that the Member States shall lay down penalties

to be imposed in the event of infringement of the national provisions transposing the Directive. These sanctions should be effective, proportionate and dissuasive. In line 2 of the Article it is further stated that the Member States shall provide for financial penalties proportional to the turnover of the legal person or the income of the natural person who has committed the infringement. In their uniform statement of the Länder pursuant to Art. 23d para. 2 B-VG of 2 October 2023 as well as in the statement of the Vorarlberg Landtag pursuant to Art. 23g para. 3 B-VG of 11 September 2023, the Länder note that this provision is excessive beyond the regulation of a Directive and interferes too specifically with the administrative criminal law of the Member States, which makes enforcement in conformity with the Directive impossible. In order to comply with the principle of proportionality, this provision should be revised and the Member States should be given sufficient leeway in the national implementation of the Directive with regard to the imposition of penalties.