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RESOLUTION OF THE 4TH STANDING COMMITTEE

(European Union Policies)

(*Rapporteur* MATERA)

adopted at the sitting of 13 December 2023

ABOUT

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL ON SOIL MONITORING AND RESILIENCE (LEGISLATION
ON SOIL MONITORING (COM(2023) 416 FINAL)**

pursuant to Rule 144(1a) and (6) of the Rules of Procedure

Communicated to the Presidency on 19 December 2023

The Commission,

examined the proposal for a Directive of the European Parliament and of the Council (COM(2023) 416 final) on monitoring the state of the soil and its resilience, the preservation of which is of great concern to the European Union;

Whereas:

- the process of soil degradation does not stop at national borders, but transcends them, affecting soil fertility potential, biodiversity, human health and the response to extreme weather events, climate-related hazards and fires, and that the continuing state of soil degradation highlights the presence of significant regulatory and operational gaps in existing national and EU policies;

- The proposal complements existing European environmental legislation, such as the directives on industrial emissions, waste, landfills, environmental liability, as well as on the protection of the environment through criminal law, by covering all types of soil contamination, including historical soil contamination, and defines a uniform monitoring framework to produce and assess comparable data on soil health, increase soil resilience and ensure sustainable soil use, with the goal of achieving healthy soils across the EU by 2050;

Taking into account the Government's report of 5 October 2023 prepared by the Ministry of the Environment and Energy Security and submitted pursuant to Article 6 of Law No. 234 of 24 December 2012,

It is considered that the proposal respects the principle of subsidiarity, but can be improved with regard to the principle of proportionality, according to the following considerations.

There must be coordination between this proposal and the proposal for a regulation of the European Parliament and of the Council on nature restoration (COM(2022) 304 final), on which the European Parliament and the Council themselves reached political agreement on 9 November. In particular, it is necessary to clearly delineate the relationship between the obligation to increase the *trend of* urban green spaces from 2031 (Article 6 of the aforementioned proposal for a regulation on nature restoration), the goal of achieving zero net land consumption by 2050

(set out in the EU Soil Strategy 2030 - COM(2021) 699 final) and the principles on the mitigation and compensation of the loss of soil's capacity to provide ecosystem services (Article 11 of the proposed directive).

In relation to the new *governance of soil*, it is noted that the establishment of soil districts and the relevant competent authorities (Articles 4 and 5 of the draft directive), cannot disregard the full involvement of the regions, both for legislative and administrative competences and for the planning of interventions and their related funding in the field of land governance (also in the reclamation of polluted sites).

It is also considered appropriate to take into account the widespread heterogeneity in the composition of the soil and subsoil of a territory such as Italy, where the presence of pollutants in certain areas (such as arsenic or other metals) depends not on anthropogenic emissions, but on the particular historical or geological composition of the soil and subsoil.

With regard to definitions, it is highlighted that the definition of "ecosystem services" in Article 3, number 3) of the proposed directive is unclear. With reference to Article 11, which sets out principles for the mitigation of soil consumption, it is considered preferable to improve the definition with a more generic wording, also because of the synergic relationship that this article has with the "hierarchy of soil consumption", envisaged in the above-mentioned EU Soil Strategy 2030.

In addition, Article 11(b) could be supplemented with the phrase "within the limits of technical and economic feasibility", similarly to Article 11(a), to indicate effective compensation for the loss of soil capacity to provide ecosystem services, i.e. both technically and economically feasible.

Still on the definitions in Article 3, a distinction should be made between 'potentially contaminated' and 'contaminated' sites, using two separate definitions. Consequently, the definition of 'soil contamination' should take into account the presence of evidence that the chemical substance or agent in the soil poses an unacceptable risk to human health and the environment.

Furthermore, the definition of 'healthy soil' should incorporate the distinction between different soils and land uses, which are also discriminating for risk assessment and the definition of health.

In Article 9, the definition of 'unsound soil' stipulates that if one of the criteria is not fulfilled, the soil will automatically be considered unsound (as in the assessment of the status of water bodies in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000, the so-called Water Framework Directive), thus excluding the ability to provide certain ecosystem services. This risks exceeding the objectives of the

proposal, also considering the problematic implementation of the aforementioned Water Framework Directive.

In addition, Article 9(5) obliges Member States to establish a soil health certification mechanism for land owners and land managers, which could place a burden on public administration for its administration. However, if established under the Regulation, the Member State would not be able to exempt itself from its administrative implementation, while private land owners or managers would retain the option, and thus not the obligation, to use the mechanism in order to proceed with land transactions.

Article 13 of the proposal defines potentially contaminated sites as those places, identified by Member States, where soil contamination is suspected on the basis of evidence collected in line with a set of criteria. These criteria foresee that it is sufficient to have an activity, completed or ongoing, at risk of being potentially contaminating. A more precise definition of the cases in which the existence of a concrete risk or danger of contamination can be established and to which the ensuing obligations and fulfilments can be attributed would be appropriate.

In this regard, it should be noted that the Environmental Code (Legislative Decree No. 152 of 30 April 2006) defines a site as potentially contaminated when an alteration of the qualitative characteristics of the environmental matrices is ascertained, such as to represent a potential risk to human health, from which it imposes specific obligations of compliance.

As regards Articles 13 and 14 again, national and EU legislation should be consistent to avoid double requirements (e.g. the soil provisions for industrial production sites in Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions - IED).

Concerning Article 15, the role of the competent authority should be to ensure that the risk assessment is performed appropriately and to approve this assessment, leaving site-specific risk assessments to the responsible party, based on the risk assessment methodology defined by the state.

The introduction of the public register, as envisaged in Article 16, should be limited to contaminated sites only and not also to potentially contaminated sites, or alternatively set up two separate sections of the register, with the possibility of removal, in both cases, from the list when remediation activities are carried out.

In Annex I, Part B, the criteria indicating good soil health should be clarified in order to link to the risk assessment methodology, which takes into account the purpose and use of the soil.

In Annex II, Part B, the number of analytical methodologies should be expanded in order to obtain analytical results that

considering different soil types, allow for complete and accurate evaluations.

The penalties, provided for in Article 23, should be proportionate to the nature and gravity of the offending conduct and not to the turnover of the legal person or natural person who committed the infringement.

In Annex I (part B and C), considering that soil is a key resource for agriculture, not only excess nutrients in the soil should be considered, but also their deficiency. Nutrient *use efficiency* (NUE) should also be added to the principles of sustainable soil management, listed in Annex III.

Finally, it is considered appropriate that the remediation procedures relating to the rehabilitation of contaminated land, including the bureaucratic procedures for initiating such procedures, should be more standardised at European level. Indeed, the proposal makes it clear in its explanatory memorandum that, as far as the remediation and restoration of contaminated sites are concerned, the preferred option is one that allows for a high degree of flexibility and that "may entail a greater risk of not achieving the objective of achieving soil health by 2050".

