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NGO recommendations for trilogue negotiations on the Soil Monitoring Law

Introduction

Healthy soils are essential for life, providing the foundation for 95% of the food we eat. They filter and store water, help plants grow and are critical to the long-term resilience and stability of farmer's livelihoods, especially in the face of increasing extreme weather events. Currently, over 60% of soils are undergoing degradation processes. One of the major causes of this is the lack of a dedicated EU legislative framework, as the failure to protect soils from the pressures of intensive agriculture, urban expansion, climate change and pollution have led to compaction, erosion and loss of biodiversity and organic matter. Soil degradation costs Europe at least 97 billion euros per year, with the costs of inaction outweighing the cost of action by a factor of six.

In July 2023, the European Commission proposed a Soil Monitoring Law (Directive for Soil Monitoring and Resilience, SML), but its proposal falls short in key areas. Over the past year, the European Parliament (EP) and the Council adopted their respective positions on the SML. As the institutions now enter trilogue negotiations, we, a coalition of 9 NGOs, urge them to agree on the strongest version of the law, drawing on the most ambitious elements of the agreed mandates.

To support this effort, we present our 10 key policy recommendations for the upcoming trilogue negotiations on the Soil Monitoring Law:

Legal Framework and Governance

1. Ensure a strong overarching objective of the Directive

The Commission's proposal for the SML sets an overarching objective to improve soil health in the EU with the view to achieve healthy soils by 2050. Ideally, this objective would be supported by both long-term and intermediate legally binding targets as well as a requirement for Member States to draw up soil health plans, setting a clear trajectory towards 2050 and helping track Member States' progress. Without legally binding targets, the 2050 objective is purely aspirational

and the bare minimum the SML should prescribe. However, despite its non-binding nature, the 2050 objective plays an important role setting the pace for the entire Directive and ensuring that its obligations and timelines are aimed towards a common goal. It is therefore essential that the institutions recognise its importance for driving continuous progress.

For this reason, we recommend that the law includes **robust language on the 2050 objective**, requiring Member States to implement measures to **improve soil health** in line with this objective, while also adhering to the **principle of non-deterioration** of existing soil conditions (EP, Art. 1(1)). We also recommend including regular **assessments of progress** towards achieving this objective, notably (1) in the evaluation and review of the Directive, clarifying that more ambitious measures should be adopted if progress falls short of meeting the objective, and (2) in regular reporting by the Commission, as suggested in the Parliament position (EP, Art. 24(2a)). EU decision makers must also ensure that any other deadlines set out in the Directive are not pushed back, as this could jeopardise the achievement of the 2050 objective (deadlines in Articles 8, 9, 10, 13, 18, 24 and 25). The law should outline a coherent timeline that prioritises the critical condition of soils and avoids meaningful action being postponed until later years.

Soil health monitoring and assessment

2. Guarantee an evidence-based and holistic framework for soil health monitoring and assessment

Soil protection must rely on a harmonised monitoring and assessment framework, based on state-of-the-art scientific knowledge. The Directive must put in place a **clear and common soil health assessment methodology and classification** that ensures comparability between Member States. A **categorisation in five classes of ecological status,** as introduced by the Parliament (EP, Art. 3(1)(1a)), reflects well the different statuses of soil health and rewards positive development in progressing from a lower to a higher ecological class. While it overcomes some of the limitations of the Commission's binary “healthy” versus “not healthy” system, it could still be improved by classifying as “healthy” only the soils falling within the highest category. For the other categories, a **clear and binding timeline for improvement** of soil health should be set. Assessments of soil ecological status should be accompanied by **reports on relative improvement, trends, progress or regression** as suggested by the Parliament (EP, Art. 9 (1)(3)).

To establish an effective mechanism for soil protection and restoration and to ensure efficient and harmonised implementation of the Directive, **Annex I must remain a mandatory tool**. The SML should require the Commission to establish **EU-wide, binding thresholds** for soil descriptors, whenever scientifically feasible. If local adaptations are needed, these should be developed in **consultation of scientific committees**, while ensuring full transparency. The Directive should define a clear **mechanism that empowers the Commission** to make observations on the thresholds set by Member States and approve them, as proposed in the Parliament position (EP, Art. 9(4a-4d)).

It is concerning that the Council has suggested allowing Member States to **forgo new soil measurements** for a soil descriptor "if it is reasonable and justified" to expect that values have "not evolved significantly since the last cycle" (Council, Art. 8(5)), without requiring further

approval by the Commission. This grants excessive flexibility to Member States, potentially resulting in an uneven playing field. Therefore, we recommend to not include this.

The SML will require Member States to establish **soil districts.** While we consider the minimum alignment with NUTS 1 territorial units, as suggested by the Commission, to be clearly too broad, it is pivotal that Member States base these soil districts on **environmental and pedoclimatic conditions.**

3. Put soil biodiversity at the core of the law

Soil biodiversity plays a vital role for overall soil health by maintaining ecosystem functioning and providing crucial ecosystem services. We believe that decision-makers should put **soil biodiversity at the core** of the law's monitoring and assessment framework to effectively capture soil's capacity as a life-support system.

This entails as a minimum: (1) introducing **definitions of soil biodiversity and of soil functions** (as suggested by the EP, Art. 3(1)(3a) and Art. 3(1)(1b)), and (2) enlarging the list of **mandatory soil biodiversity descriptors** with additional adequate and scientifically robust descriptors.

The Directive should provide a **clear path towards the establishment of criteria for soil biodiversity descriptors** where current knowledge is insufficient to define them now. This could be achieved by setting a clear timeline for the definition of criteria, involving an expert group and defining a dedicated process in the evaluation and review of the Directive (see our technical briefing on soil biodiversity). Making the **monitoring and assessment of soil biodiversity mandatory for all Member States** is a precondition to address current knowledge gaps on soil biodiversity in a timely way, allowing soil policy to progress and overall soil health to improve.

4. Ensure that soil pollution is sufficiently addressed

Diffuse soil pollution severely undermines soil health and ecosystem services. Diffuse pollution by agro-chemicals, industry and society has become a major soil threat. For example, pesticide use has significant detrimental non-target effects on soil biodiversity, with negative effects across a wide variety of pesticide classes, soils organisms and endpoints. Monitoring, prevention and reduction of diffuse soil pollution is therefore an essential prerequisite to reaching healthy soils in Europe, in line with the EU Soil Strategy and Soil Mission objectives on tackling diffuse sources of soil pollution.

To measure soil contamination, the SML proposal includes a descriptor for heavy metal concentration and allows Member States to select specific organic contaminants. These descriptors are clearly insufficient to ensure robust monitoring and assessment of relevant contaminants across Europe. In this regard, the Parliament's position is a clear improvement as it further specifies that **plant protection products candidates for substitution and substances authorised under emergency regime, biocides residues, veterinary products and PFAS** should be monitored (EP, Annex 1, Tier 1). However, the Parliament leaves monitoring of **pharmaceutical products and micro- and nanoplastics** optional by including them in Tier 2 and

Tier 3 respectively. Given their impact on the environment and human health, this monitoring should be mandatory, whenever scientifically feasible.

We strongly recommend a binding **priority list of soil contaminants for monitoring and assessment, supported with science-based threshold values** – either existing or to be developed. Ideally, this list should include at least pesticides (at a minimum more hazardous pesticides, banned pesticides and to be prioritised pesticides based on science-based prioritisation), biocides, heavy metals, PFAS, PAHs, PCBs, VOCs, mineral oil, micro- and nanoplastics, pharmaceutical and veterinary products, contaminants linked to sewage sludge and contaminants of emerging concern. Monitoring should include residues, metabolites, co-formulants and by-products. Where analytical methods and protocols are not yet available, the law should provide clear incentives for their development and lay the foundation for future monitoring and assessment. It is also key that all relevant legislation (e.g. water, air, pesticides) is considered when establishing the list of contaminants to be monitored.

We welcome that both the Parliament and Council include the need **to establish a watch list of soil contaminants** which should be complementary to a binding list of priority substances and aim to protect soils from chemicals that have the potential to cause significant risks (EP, Art. 24(2b) and Council, Art. 7(3) and (5a)). In line with the Parliament's and Council's positions, we recommend selecting substances that seem to **pose a significant risk** to the soil environment and for which **monitoring data is insufficient**, as well as clarifying that the **number of substances should not be limited** (EP, Recital 48a and Council, Recital 35a). We also agree with the Council position that the watch list should be **regularly updated** to reflect the latest scientific knowledge (Council, Art. 7 (5a)). In addition, we strongly recommend that this watch list triggers mandatory adjustments to the list of descriptors.

The SML proposal aims to improve the application of the **polluter-pays principle**. While this principle is enshrined in EU law, it requires stronger legislative backing for full implementation. This can be achieved through **specific provisions requiring polluters to pay** for the pollution they cause, **financial guarantees** for operators, and **levies** on substances causing diffuse pollution. Unfortunately, none of the institutions have proposed such provisions for the law.

Soil and land management

5. Mandate sustainable soil management

While several parts of the proposed law focus on monitoring and assessing soil health, Article 10 stands out as a potential primary driver for the actual improvement of the state of EU soils.

Unfortunately, the European Parliament stripped away most obligations regarding sustainable soil management by deleting Article 10(1), (3) and (4) as well as Annex III, leaving only minimal requirements for advice, training and capacity building in Article 10(2). The introduction of a **sustainable soil management toolbox** (EP, Art. 10a) is a positive step, but not sufficient on its own. While it is encouraging that the Council retained most of the obligations in Article 10, the decision to make Annex III voluntary is a concerning drawback.

Therefore, we recommend **maintaining the Commission's version of Article 10**, with its mandatory character, as well as its **definition** of "sustainable soil management" in Article 3. Between the co-legislators, the Council's text aligns more closely with the Commission's wording. In addition, we also recommend developing a clear **roadmap for implementing** soil management practices. This includes removing vague wording, such as the term "gradually", and introducing precise timelines for the implementation of sustainable soil management practices, as well as the phasing out of practices that have a negative impact on soil health.

6. Include strong provisions that effectively minimise land take

The final report of the Strategic Dialogue on the future of agriculture, adopted by consensus by all participating stakeholders, called on the institutions to integrate a legally binding objective of 'no net land take by 2050' into the SML. Land take is an important driver of soil degradation across Europe, impacting 4.2% of EU territory and potentially triggering a loss of soil organic carbon ranging between 10-66% in the affected soils. Unfortunately, none of the institutions have proposed an objective, legally binding or not, to achieve zero net land take by 2050. Both the Parliament and the Council have significantly weakened Article 11 and made the land take mitigation principles voluntary. Regretfully, the Council has also limited the scope of the article from "land take" to only "soil sealing and destruction."

In light of the respective positions of the co-legislators, we recommend **preserving the Commission's version of Article 11**, retaining the **mandatory character** of the land take mitigation principles. Additionally, the **broader scope of "land take"** should be maintained, as it aligns with the terminology used in the Soil Strategy and encompasses a wide range of land use changes. Since only a fraction of the land taken is actually sealed, it is crucial to retain both parameters as points of reference, with the reduction of land take serving as the primary target. Both the Parliament and the Council have proposed positive additions that should be incorporated in the law, including the **reuse and repurposing of sealed soils** (Council, Art. 11(1)(a)(i)), the **renaturation of sealed soils** (Council, Art. 11(1)(b)), and the **mapping of abandoned brownfield and industrial sites** (EP, Art. 11(1)(bb)).

7. Guarantee safe and holistic management of contaminated sites

There are 2.8 million potentially contaminated sites in the EU, of which only 24% have been inventoried and about 2% remediated. For this reason, it is encouraging that the SML proposal includes clear provisions on the identification, investigation and remediation of contaminated sites. Most of the obligations in these articles have been preserved in the co-legislators' positions, which reflects a clear commitment to tackle this issue.

The law should prioritise the highest level of protection for public health, animal health and the environment (**One Health Concept**), basing its actions on the **precautionary principle**. Ideally, it should set **mandatory EU-wide thresholds for key pollutants** as well as a clear definition of an "**unacceptable risk for human health and the environment**". At a minimum, and in line with the Parliament's position, it should empower the Commission to adopt **delegated acts establishing maximum tolerable values** defining such unacceptable risks (EP, Art. 15(5a)).

Furthermore, and in line with the Parliament's position, the law should clarify that Member States should always aim for **prevention and soil decontamination** (EP, Art. 15(5)). Given the significant risk of contaminated sites, the Commission's **timeline** should at least be maintained and deadlines for the investigation and management of contaminated sites should be set.

Transparency and Public Engagement

8. Put in place effective mechanisms that allow for comprehensive public participation

The Commission's proposal includes provisions on public participation in relation to both sustainable soil management (Art. 10) and contaminated sites (Art. 12). To varying degrees, all three institutional positions show a general concern for **public engagement** and recognise its importance for **effective environmental decision-making** in the SML. It is therefore important that the final legislative text reflects this in the clearest and most extensive way possible.

In their respective positions, the Council has maintained the Commission's wording on **public participation for sustainable soil management** (Council, Art. 10(1)(4)), while the Parliament has excluded it from Article 10 entirely. For this reason, we recommend **endorsing the Council's suggestion** for this specific element.

At the same time, the Parliament has made positive additions to **public participation in relation to contaminated sites** (Art. 12), importantly **extending its scope** to also cover the identification and investigation of potentially contaminated sites and the assessment and management of contaminated sites (EP, Art. 12(4)(a)). The Council, on the other hand, adopted a different approach, **weakening language** throughout the article (Council, Art. 12(4)(a) and (c)) and excluding the possibility of the public to provide information for the management of contaminated sites (Council, Art. 12(4)(b)). We therefore recommend supporting the **Parliament's positive suggestions** for this article.

9. Ensure transparent and accessible information to the public

The Commission has included a provision on information to the public under Article 19 of its proposal ensuring that all data and information generated by the Directive is made accessible to the public. While maintaining the article, the Parliament and Council positions have **limited the scope** of the public's right to access information. The Parliament proposes that soil health data and information be made public only in "**aggregated and anonymised form**" and with the "**express permission of the landowner and land manager**" (EP, Art. 19(2) and (3)). Similarly, the Council also suggests making this data public only in aggregated form (Council, Art. 19(1)).

Public and digital **access to raw soil data is essential for transparency, policy, management, scientific research and soil literacy**. Robust and raw soil data is needed to inform national, regional and local soil management strategies. Scientific soil research requires access to raw soil data, e.g. for uncovering relationships and patterns of environmental and other parameters, for plot and local, basin and regional scale research, for modelling and for the calibration and validation of technical tools (e.g. monitoring tools).

Requiring **express permission from landowners/managers** would not only be **impractical**, as public authorities would lack the resources to check with each individual landowner/manager for each piece of information, but would also **contravene the right of everyone to obtain all environmental information** held by EU institutions on request (unless one of the clearly defined exceptions under Article 4 Regulation 1049/2001 and Article 6 Regulation 1367/2006 applies). Adding an additional exception from disclosure by requiring express permission would be contrary to these Regulations and Article 4 of the Aarhus Convention, which these Regulations implement into EU law.

Proper disclosure of all relevant information to the public – at all stages of the decision-making process – increases **transparency** and **public engagement** and ensures the **proper implementation of the law**. For these reasons, we recommend **adopting the Commission's wording for Article 19** ensuring that all data and information generated by the Directive is made accessible to the public **without ambiguities or constraints**, all the while respecting personal data (as already ensured through the cross-reference to Regulation 2018/1725 in the Commission's proposal).

Compliance and accountability

10. Guarantee access to justice and enforce penalties to ensure compliance and accountability

Access to justice is the right for individuals and NGOs to go to court to ensure that EU environmental law is respected in practice. It is a **fundamental right** recognised by the Aarhus Convention – binding on the EU and its Member States – and an essential element of democracy and the rule of law. Clear access to justice provisions in EU legislation provide significant benefits, namely: **better enforcement of EU law, upholding the international rule of law, ensuring a level playing field for businesses and maintaining consistency with existing EU legislation**.

Under Article 22 of its proposal, the Commission has included a provision on access to justice with explicit reference to "non-governmental organisation[s] promoting environmental protection." This wording is most closely aligned with access to justice provisions found in other EU environmental laws, such as the Environmental Impact Assessment Directive, the Industrial Emissions Directive, the Seveso III Directive and the newly agreed recast Ambient Air Quality and Waste and Water Treatment Directives. In their respective positions, **both the European Parliament and the Council have also recognised the importance of an article on access to justice, albeit in less clear language**.

To truly strengthen the article on access to justice and reap its full benefits, we recommend staying close to existing EU law and following the **Commission's original wording for Article 22**, *explicitly* granting standing to **"any non-governmental organisation promoting environmental protection and meeting any requirements under national law"** (Art. 22(2). At the same time, we recommend including the additional specifications agreed by the Parliament and Council that **standing cannot be made conditional on prior participation** (EP and Council, Art. 22(2).

The Commission also introduces a provision on **penalties under Article 23**, establishing common rules on penalties applicable to breaches of the SML, including the requirement for penalties to be "effective, proportionate and dissuasive." This wording reflects language found in other EU legislation, such as the revised Ambient Air Quality Directives, where provisions on penalties and access to justice sit side by side. However, both the European Parliament and the Council have proposed deleting this article. To ensure **greater compliance** with the Directive, as well as **consistency across EU legislation**, it is essential that the Commission's proposed article on penalties is retained in the final text.

Conclusion

EU legislation on soil protection has been postponed for far too long and it is now high time to ensure that an ambitious Soil Monitoring Law is adopted, centred on improving soil health, equipped with effective instruments and placing a strong emphasis on soil biodiversity. We call on the European Parliament and the Council to consider these elements when negotiating on this Law. The Commission proposal for a Soil Monitoring Law is a start – now it must be improved upon to secure the future health of European soils.

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