



Soil Monitoring Law:

Joint position from the European non-energy extractive industry

Aggregates Europe-UEPG, Cerame-Unie, EUROGYPSUM, Euromines, European Carbon and Graphite Association (ECGA), The European Cement Association (CEMBUREAU), European & International Federation of Natural Stone Industries (EUROROC), European Expanded Clay Association (EXCA), European Potash Producers Association (APEP), Industrial Minerals Europe (IMA-Europe)

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We are calling for:

The undersigned associations of the European non-energy extractive industries are calling for the European Parliament and Council to exclude raw material deposits and regulated mining areas from the scope of the Soil Monitoring and Resilience Directive, or Soil Monitoring Law (SML). As emphasized in the recently published Critical Raw Materials Act (CRMA), it is essential to secure and improve access to domestic raw materials for a resilient and competitive EU industry. To respond to the EU demand for raw materials, we extract them below soil, accessing it down to bedrock. During that process the overburden will have to be relocated and used for restoration of the land after our operations, in full compliance with the conditions of the permit and contributing to the Nature Restoration Law (NRL). The restored land is in good health and its final destination is adapted to societal needs, which could be agriculture or natural areas with restored ecosystems.

More specifically, we recommend amending the following items arising from both current positions by the European Parliament and Council:

Support and expand the exclusion of the concept “raw materials deposits” from the main definition of “soil”, as appeared in the adopted April 2024 Parliament Report (Article 3 Paragraph 1 Point 1):

*“soil” means the top layer of the Earth’s crust situated between the bedrock and the land surface, which is composed of mineral particles, organic matter, water, air and living organisms, **excluding raw material deposits and regulated mining areas.**”*

Consequently, we are calling for the following amendments:

Exclusion of the concept of “open-pit mining, quarrying” activities in the categorization of “soil destruction”, as appeared on the June 2024 Council Position (Recital 30, together with Article 3 Paragraph 1 Point 17):

“Soil destruction is the destruction of the surface layer of the soil and sometimes the subsoil. It can be seen most predominantly during construction works, ~~open-pit mining, quarrying~~, which completely remove – sometimes temporarily - layers of soil, or more insidiously in examples such as waste disposal and dumping grounds where the soil is damaged to the point of destruction.”



Exclusion of “raw material” from the definition of “artificial land”, as appeared in the EU Commission proposal (Article 3 Point 16), and not amended in the 2024 April Parliament report:

“artificial land” means land used as a platform for constructions and infrastructure ~~or as a direct source of raw material~~ or as archive for historic patrimony at the expense of the capacity of soils to provide other ecosystem services;”

In addition to the more specific terminology used in the body of text, there is concern on the standards and criteria set for the monitoring and assessment of “soil health”, as appeared on the June 2024 Council position (Article 9 Paragraph 1):

“Member States shall assess the soil health in all their soil districts and associated soil units based on the data collected in the context of the monitoring referred to in Articles 6, 7 and 8 for each of the soil descriptors [...] listed in Parts A and B of Annex I.”

Justification:

Without those amendments, the raw materials stored in the ground itself (as well as the surrounding rock and soil layers) would be defined as "soil". Consequently, the extraction of raw materials and the relocation of the surrounding materials (overburden) in order to access the raw material would be categorized as “land take” or "soil degradation". Moreover, according to the current SML proposals (Article 11), land use and soil degradation (soil sealing and soil destruction) are to be avoided, reduced or compensated for. However, the relocation of overburden and the extraction of raw materials is inherent to the sector’s core activities. Raw materials extraction in Europe would only be possible in exceptional cases -if at all- with the SML in its current version. This could lead to further complicating permitting procedures and a de facto ban for mining and quarrying activities, contradicting the EU objective of improving the security of supply through the extraction of domestic raw materials, thus jeopardizing the resilience and competitiveness of our sector. It contradicts the Critical Raw Materials Act recently adopted and the recognition of extractive industry sectors to contribute to the Nature Restoration Law.

In the second item, the reference to “mining, quarrying” should be removed as mining and quarrying activities do not destroy soils. In mining and quarrying, (top)soil shall be disposed apart in very specific conditions to maintain the organic life and ecosystem. It is acknowledged as a valuable material for restoration projects. The mapping of “unhealthy” areas with a view on posterior restorative actions, could interpose newer administrative and procedural barriers to extractive activities. It would also affect site restoration, soil treatment and excavation of soils for construction.

In the third item, we consider that any confusion must be avoided between extractive activities and artificialization, as the existing texts wrongly associate it with soil degradation. The consideration of land artificialization as a degrading factor contradicts the very same nature of soil intervention. A contradiction even more flagrant when analysed within the context of the EU Biodiversity Strategy 2030 and other monitoring and restorative legislation as the Nature Restoration Regulation. It is contradictory for the extractive sector to simultaneously achieve a healthy status of its soils and yet not subjecting them to any type of intervention. Therefore, artificial land and soil artificialization should not be considered as destructive parameters, as they can contribute as a means to achieving the same objectives set by the present Directive.

In the fourth item, assessment criteria items listed on ANNEX I are not specifically listed as non-mutually exclusive. That could lead into a “one-out-all-out” principle that could affect the denomination of a soil area as “not healthy” due to the negative assessment of minor criteria.



This will prove very difficult and is already a known problem in the Water Framework Directive (i.e., very difficult to show improvements in quality status and status over time), and therefore should be avoided in the new Soil Monitoring Directive. In addition, a mention to a specific list of indicators is included within the criteria of “soil destruction”. As previously stated, this concept considers quarrying and mining as one of the main sources of such destruction (as in Part D of the same ANNEX I). Such listing should be then either deleted or not include mining and quarrying activities within their range of analysis.

Given the afore-mentioned points, it should be clarified in the final legislation, if it should pass, that raw materials deposits and regulated extraction areas are not soils within the meaning of the Directive and therefore not within the scope of the Soil Monitoring Directive. Likewise, mining and quarrying activities do not destroy soils, as otherwise raw material extraction would be restricted, which is certainly not the intention of the EU Commission or the European legislator.

In view of the upcoming Parliament and Council trilogues scheduled for the last quarter of 2024, where the dossier will be discussed at both technical and political levels, the undersigned associations encourage the Council and the European Parliament to consider our above requests.