EU Nature Restoration Law: National restoration plans & implementation at the Member State level

An Cliquet

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Legal assessment of the Proposal for an EU Nature Restoration Law

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The EU Nature Restoration Law: Providing legal certainty in tackling the biodiversity and climate crisis

SERE Legal Working Group[i] [ii]

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1. Weakening or deleting the Nature Restoration Law will affect legal certainty for a sustainable transition

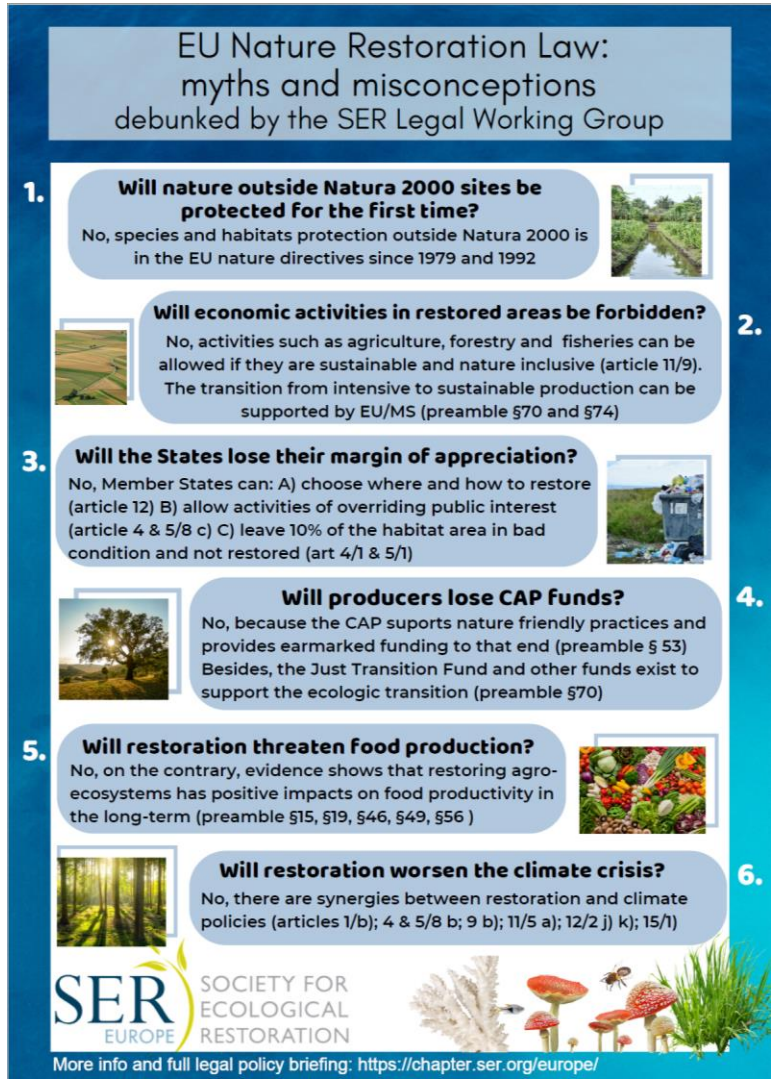
The Commission proposal for an EU Nature Restoration Law (NRL) (June 2022) is a **balanced and groundbreaking law proposal** to tackle the biodiversity and climate crisis and achieve the biodiversity and climate objectives for 2030 to 2050. The preventive legal strategies we used in the past have largely failed: the majority of European habitats and species are in an unfavourable conservation status. We need **massive upscaling of restoration of ecosystems**, as this is one of the most important and effective measures to counter the current environmental crises and help the transition to a more sustainable society.

The NRL will provide **more legal certainty for Member States, businesses and stakeholders**. It provides clarity regarding future goals and it promotes a fair and just transition towards a sustainable economy across Europe. Deleting or weakening the NRL will only lead to more uncertainties for Member States, businesses and other stakeholders.

2. Improved legal certainty for restoration obligations

Restoration obligations for Member States already exist in current legislation (e.g. Habitats and Birds Directives, Water Framework Directive, Marine Strategy Framework Directive). However, restoration under existing laws is done on an ad hoc basis and often in small-scale projects. Existing laws miss the necessary deadlines and detailed and clear obligations on nature restoration. These shortcomings led to legal uncertainties and different applications of these laws in different Member States.

The NRL provides **a structured and integrated approach** to restoration and creates more **legal certainty** for Member States and stakeholders by establishing a legal framework with clear definitions, rights and obligations, targets and deadlines. It also includes obligations for agricultural systems and urban environments, that are largely missing in existing laws.



All documents available at: https://chapter.ser.org/europe/

Overall assessment of the Commission proposal for a Nature Restoration Law

- Overall assessment: very positive
- Holistic (biodiversity & climate change)
- Science-based
- Legally sound:
  - Necessary addition to existing legislation (Birds & Habitats Directives)
  - Builds on existing legislation
  - Binding targets & deadlines
  - Obligations outside Nature 2000 & on connectivity
  - Obligations in ecosystems that are not covered (urban ecosystems, agricultural ecosystems…)

Overall assessment of the Commission proposal for a Nature Restoration Law

- Upscaling for restoration is necessary (see EEA, State of Nature report)
- The Nature Restoration Law will provide more legal certainty:
  - Clear obligations & deadlines
  - Once a good condition is reached and nature is more resilient, there is more leeway for (sustainable) human activities
  - If further deterioration is allowed, this inaction will lead to further legal uncertainties (see for example the nitrogen crisis in the Netherlands and in other Member States – which is a result of inaction!)

Overall assessment of the Commission proposal for a Nature Restoration Law

- One of the ‘myths’: ‘Member States will lose their margin of appreciation’
- The concrete restoration measures (where, how…) are decided in national restoration plans
- Activities of overriding public interest can be allowed
- Restoration is not required on the whole territory

Implementation of the Nature Restoration Law

- Overall goals (article 1, § 2)
  - Put in place restoration measures on 20% of land & sea area by 2030; in all ecosystems in need or restoration by 2050
- But no ‘effort-sharing’ mechanism between Member States
- How will efforts by Member States add up to reach the overall goal?
- Advice SERE Legal Working Group: Member States must define in their national restoration plan how their restoration measures will add up to the overall targets from article 1

National restoration plans

- National restoration plans:
  - Plan up to 2050
  - Plans should be science-based
  - Plans will be assessed by Commission
  - Review of the plans at least every 10 years

National restoration plans

- Article 11: preparation of the national restoration plans
  - Quantify the area that needs to be restored
  - Identify agricultural and forest areas in need of restoration
  - Identify synergies with climate change mitigation & adaptation & disaster prevention (take into account national energy & climate plans…)
  - Coordinate plans with the designation of renewables go-to areas
  - Take into account:
    - Conservation measures for N2000 sites
    - Prioritised action frameworks for N2000
    - Measures under Water Framework Directive & marine strategies
    - National air pollution control programmes
    - …
  - Synergies with other national restoration plans
  - Aim to optimise ecological, economic & social functions of ecosystems
  - Ensure public participation

National restoration plans

- Article 12: content of the national restoration plans
  - Quantification of areas to be restored
  - Description of restoration measures
  - Indication of non-deterioration measures
  - Timing
  - Monitoring
  - Estimated co-benefits for climate change mitigation
  - Synergies with national adaptation strategies
  - Estimated financing needs (+ support for stakeholders)
  - Indication of negative subsidies
  - …

Assessment of articles on implementation

- National restoration plan = new instrument
- Level of detail on preparation & contents is necessary for effective regulation
- Alignment with other plans & measures
- Role of the Commission:
  - Will provide a uniform format for national restoration plans
  - Assessment of draft plans
  - May request an updated draft plan
- Extensive monitoring & reporting duties
- Commission should develop guidance documents within a certain deadline (guidance on the restoration targets, such as ‘good condition’ and ‘favourable reference area’; non-deterioration obligations; best practices of restoration of different ecosystem types and species…)

Amendments by Council & EU Parliament: downgrading the law (reduced ambition)

- Example of downgrading the law: article 4

Commission proposal	Parliament amendments
put in place restoration measures	Aim to put in place restoration measures in Natura 2000 sites that are not in good condition and have been quantified in national restoration plan

Amendments by Council & EU Parliament: enlarging margin of appreciation

- Example of increased margin of appreciation: article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
Member states shall quantify the area that needs to be restored to reach the restoration targets (…). The quantification shall be based, amongst others, on the following information: (a) for each habitat type: (i) the total habitat area and a map of its current distribution; (ii) the habitat area not in good condition; (iii) the favourable reference area taking into account the documented losses over at least the last 70 years and the projected changes to environmental conditions due to climate change; (iv) the areas most suitable for the re-establishment of habitat types in view of ongoing and projected changes to environmental conditions due to climate change	Member states shall quantify the area that needs to be restored to reach the restoration targets (…) . The quantification shall be based, amongst others, on the following information: (a) for each habitat type: (i) the total habitat area and a map of its current distribution; (ii) the habitat area not in good condition; (iii) the favourable reference area taking into account records of historical distribution ➡ DELETED

Amendments by Council & EU Parliament: enlarging margin of appreciation

- Example of increased margin of appreciation: article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
	9a Member States may, when preparing the national restoration plans, take into account, the diversity of situations in various regions related to social, economic and cultural requirements, regional and local characteristics and population density

Amendments by Council & EU Parliament: enlarging margin of appreciation

- Example of increased margin of appreciation: article 15 (Review of the national restoration plans)

Commission proposal	Parliament amendments
When it becomes apparent that the measures set out in the national restoration plan will not be sufficient to comply with the targets and obligations set out in Articles 4 to 10, based on the monitoring in accordance with Article 17, Member States shall revise the national restoration plan and include supplementary measures	Where monitoring in accordance with Article 17 indicates that the measures set out in the national restoration plan will not be sufficient to comply with the targets and obligations set out in Articles 4 to 10, the Member State shall review the national restoration plan, and if necessary revise it and include supplementary measures

Amendments by Council & EU Parliament: reversing priorities

- Example of reversing priorities: article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
1. Member States shall prepare national restoration plans and carry out the preparatory monitoring and research needed to identify the restoration measures that are necessary to meet the targets and obligations set out in Articles 4 to 10, taking into account the latest scientific evidence	1. Member States shall prepare national restoration plans and carry out the preparatory monitoring and research needed to identify the restoration measures that are necessary to contribute to the Union targets and meet the obligations set out in Articles 4 to 10, taking into account the latest scientific evidence, the needs of local communities, including urban ones, the most cost-effective measures and the socio-economic impact of those measures

Amendments by Council & EU Parliament: reversing priorities

- Example of reversing priorities: article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
11.2. (…) The quantification shall be based, amongst others, on the following information:	11.2. (…) The quantification shall be based, amongst others, on the following information: (bc) feasibility of restoration, cost-effectiveness and conflicting socio-economic interests

Amendments by Council & EU Parliament: reversing priorities

- Example of reversing priorities: article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
11. Member States shall ensure that the preparation of the restoration plan is open, inclusive and effective and that the public is given early and effective opportunities to participate in its elaboration	11. Member States shall ensure that the preparation of the restoration plan is open, transparent, inclusive and effective and that the public especially landowners, land managers, maritime stakeholders, and other relevant actors, such as advice and extension services, in compliance with the principle of prior and informed consent, are given early and effective opportunities to participate in the preparation of the plan. Local and regional authorities, as well as relevant management authorities, shall be properly involved in the preparation of the plan

Amendments by Council & EU Parliament: slowing down transition

- Example of slowing down transition: Article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
	(ba) for the purpose of quantifying the area of each habitat type that needs to be restored to reach the restoration targets set out in Article 4(1), point (a), and Article 5(1), point (a), the habitat area not in good condition referred to in point (a)(ii) shall only include such areas for which the condition is known

Amendments by Council & EU Parliament: slowing down transition

- Example of slowing down transition: Article 11 (Preparation of the national restoration plans)

Commission proposal	Parliament amendments
	2a. The financing of funding gaps in relation to the implementation of this Regulation shall be ensured without using any funding from the CAP, the CFP or other agricultural and fisheries funding streams

Amendments by Council & EU Parliament: slowing down transition

- Example of slowing down transition: article 15 (Review of the national restoration plans)

Commission proposal	Parliament amendments
That revised national restoration plan with supplementary measures shall be published and submitted within six months from the date of receipt of the request from the Commission.	That revised national restoration plan with supplementary measures shall be published and submitted within six months from the date of receipt of the request from the Commission. On request by the Member State concerned and where duly justified, the Commission may extend that deadline with an additional six months

Amendments by Council & EU Parliament

- Amendments by Council: weakens the proposal
- Amendments by Parliament:
  - Turns NRL into an empty box
  - Takes away the added value of the law
  - Risks undermining existing legislation
  - Disregards science and good law-making

Conclusion

- The Commission proposal is a very solid proposal
- Weakening & undermining the proposal should be avoided
- Without strong restoration obligations we will not be able to cope with the climate & biodiversity crisis
- A strong & detailed EU law is necessary for legal certainty & level-playing field amongst Member States