

FINLAND

Questions on the Nature Restoration Law Proposal, Chapters III and IV

Article 11

In Art 11(2 a, i) Is the map referred similar to the map in reporting of the HD Article 17 Habitats and Species?

In Art 11(2 a, iii), the Commission has mentioned in several working group meetings that 70 years is not a mandatory reference period for favourable reference areas. Should the wording more clearly express that this is a voluntary reference period? 70 years as a mandatory period is not feasible for all habitat groups and the approach should give more weight to ecological requirements.

In Art 11(2 b), how are Member States supposed to determine ‘sufficient quality and quantity of habitats’? Is there a common process for this foreseen?

In Art 11(4), Would it be enough to identify restoration measures needed in these sectors without mapping them? As areas where e.g. forestry is practiced are vast, the practical approach is to control and steer practices to enhance the structures that benefit biodiversity.

In Art 11(6), are there examples or common processes to follow to coordinate the development of national restoration plans with the designation of the renewables go-to areas?

In Art 11(7), could the article also include Common Agricultural Policy? The same applies to Art 12(3). Restoration plan should be in line with all relevant policies, CAP being one of the key policies.

In Art 11 (11) What is meant by words open, inclusive and effective in art. 11 paragraph 11? These requirements do not exist in the Directive 2001/42/EC. Do they mean, that the consultation must be different from the requirements set in article 6 of Directive 2001/42/EC?

Article 12

In Art 12(2, a) What kind of maps are meant here in conjunction with quantification of areas?
Perhaps maps indicating relevant biogeographic areas or ecozones?

In Art 12(2, e) Can Member States determine what size of rivers are included in the inventory of barriers?

In Art 12(2, i) The requirement seems redundant with the requirement to ensure non-deterioration. Why is this requirement needed and could this be omitted?

In Art 12(2, j) The article does not require taking negative socio-economic impacts into account (only benefits). Could it be included that it is required to take into account both socio-economic benefits and negative impacts? Both are necessary to acknowledge to appropriately prioritize the measures and plan compensatory measures.

In Art 12(2, k) The potential conflicts between restoration needs/measures and other environmental targets e.g. short-to-medium term green house gas emissions of peatlands would need to be taken into account.

In Art 12(2, m), Identifying subsidies which negatively affect achieving these targets is a very demanding task. How precise information does the Commission want? Is this necessary in the frame of a national restoration plan?

Article 13

It seems the previous articles lay down a large amount of information required for the plans. However, there is only 2 years to submit the draft plan to the Commission. Are these requirements and the timeframe contradictory?

Article 14

In Art 14(5) The Member States 'shall take due account' of the Commission's observations and in Art 15(2), it says the MS 'shall revise the national restoration plan and include supplementary measures'. What is the logic behind these two different approaches?

Article 17 & Article 18

In Art 17 (1) Who and when decides how to monitor and measure art 6 obligations? See also our question on Art 17 (9).

In Art (3) N.B. Art. 6 detailed monitoring methods are not yet known to anyone. Should monitoring only start after the methods have been decided?

In Art 17(5) Why is monitoring required every three years, instead of aligning this with existing monitoring systems, such as monitoring for Birds and Habitats directive or other legislation? For example, we have a national monitoring for soil carbon in mineral agricultural soils every 10 years. Also, soil carbon changes very slowly, and no meaningful changes can be seen in 3 years. Additionally, point b refers to article 6, which does not concern stocks of organic carbon in cropland mineral soils or the share of agricultural land with high-diversity landscape features. Should the reference to (b) be removed?

In Art 17 (7/8) The EU already monitors regions with the help of Copernicus (city Atlas and Corine land cover changes and classes). What is the division of labor between countries and EU in monitoring and in setting the monitoring rules? (also Article 13 and 14 refer to Copernicus)

In Art 17 (9) Could there be similar link to Article 6 that would allow for more precise and better for purpose design of indicators and monitoring methods for Urban environments.

In Art 17(9 c) Has the Commission already some ideas what kind of additional conditions the framework to set satisfactory levels might include to the open and effective process and assessment, based on the latest scientific evidence mentioned in Art 11(3)?

DENMARK

Article 11: Preparation of the national restoration plans

- Article 11 contains a lot of elements which should be identified, taken into account, coordinated, made use of, aimed at, be fostered. How should Member States prepare the national restoration plans if some of the elements are contradictory or it is not possible to reconcile the many considerations?
- The amount of and quality of data and documentation 70 years back in time is often very scarce, unevenly and difficult and costly to procure as it is not digitized and it does not live up to the standard for documentation as required in the Habitats Directive. It would therefore be helpful with a clarification on whether there is a requirement to document losses over at least 70 years?
- How should Member States “take into account” documented losses over at least 70 years, when there is no requirement to restore the situation as it was in the 1950ies?
- What does the reference in article 11 (11) to article 4 and 10 in the EA-directive entails? Does it mean that the national restoration plans should undergo a full environmental assessment?

Article 12: Content of the national restoration plans

- There is a need for flexibility not just to take “into account” but coordinate different national traditions for planning and the various EU plans (e.g. water framework, marine strategy, N2000 and climate). Could the Commission explain how the National Restoration Plans can integrate these processes to make sure that mapping, monitoring, reporting etc. are streamlined]?
- Many countries may need many years to develop and summarize knowledge in a useful and scientific validated form to be used in the national restoration plans. How does that fit in with the short deadlines in the proposal? Could a step-by-step be envisioned where the first plan includes certain elements, which are further developed in later revisions?
- Does the proposal take into account that including maps of areas that must be restored until 2050 already in the first plan, possibly generates demands for financial compensation as soon as the plans are published?

Article 13: Submission of the draft national restoration plan

- How does the 2 year time for preparation fit together with the comprehensive requirements in article 11 and 12?
- What is the legal effects of the submitted national restoration plans? Are identified restoration measures legally binding?

Article 14: Assessment of the national restoration plan

- What does it mean and what is the legal implications that Member States should take due account of the Commission's observations? Is it sufficient for a Member State to explain why it did not comply?

Article 15: Review of the national restoration plans

- How is it established in article 15 (2) "when it becomes apparent" that the measures are not sufficient to comply with the targets? How is the temporal connection to the provisions on non-fulfilment in article 4 and 5 (8) and (9)?
- What happens if a Member State does not comply with the "request" to a Member State to submit an updated draft according to article 15 (3), also considering that the following sentence establishes that the updated plan "shall" be published within six months?

Article 16: Access to justice

- Is article 16 fully aligned with article 9 of the Aarhus Convention (notably paragraph 2, last section, paragraph 3 and paragraph 5, last part)?

Article 17: Monitoring

- We are satisfied that common indicators are set, which make data from the Member States comparable to a greater extent than, for example, is the case with the reporting according to the habitats directive. However, as mentioned at the previous meeting, it is important that only the necessary data is collected and that it is collected at meaningful frequencies. Nature develops slowly, so it will not be possible to see development in the data either every year or every 3 years - and for some parameters, such as e.g. dead wood or the age structure of the forests, maybe not even every 6 years. Could the Commission present a proposal of how these requirements can be streamlined with existing monitoring obligations?

Article 18: Reporting

- The first national report is proposed to be submitted in 2031, which corresponds to the reporting cycle for the nature directives. Does the Commission have plans to coordinate the cycles for more nature and environmental reporting so monitoring and reporting deadlines can be streamlined?
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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Nature Restoration Regulation: WPE meeting on 30 September 2022: Preliminary questions on Chapters III and IV and related Annexes - Comments from delegations

With a view to facilitate discussions at the WPE meeting of 30 September 2022, on the Nature Restoration Regulation, the Presidency invited delegations to submit preliminary questions on Chapters III and IV and related Annexes.

Delegations will find attached preliminary questions and comments by DK, IE, AT, PL, FI and SE on Chapter III and IV and related Annexes.

IRELAND

Questions on Chaps III and IV of Proposal for a Regulation of the European Parliament and of the Council on nature restoration

For the Working Party on the Environment (Nature Restoration Law) Meeting on 30 September 2022

Article 11

Preparation of the national restoration plans

- 1. The scale and detail at which targets are expected to be set out in the NRPs is currently unclear. Thus, the format of the NRP, as outlined in Article 12(4), including more details on content, such as resolution of mapping, is required as soon as possible.*
- 2. How will consistency be ensured in relation to modelling climate change scenarios?*
- 3. The implications of data unavailability on MS implementation of the regulation are not addressed, what provisions or exemptions will be made for well-known knowledge and data gaps which cannot be addressed on a 2 year timescale? ¹.*
- 4. Given the scope and scale of the changes required to the management of both private and public property, full and effective participation on major land and sea use change would take several years, does the commission envisage that the public participation process is limited to the obligations under SEA?*
- 5. What is the role of regional bodies such as Regional Seas and other Conventions in fostering synergies in the Nature Restoration Law (ICPDR, OSPAR, HELCOM, Black Sea Commission, UNEP-MAP, CIESM)? Has this role been formally agreed?*
- 6. While the Regulations are focused on habitat connectivity for species at the population level, how will planning for such shifts in the continental range and distribution of species due to climate change impacts affecting certain MS be considered in the National Restoration Plan? Noting Arts. 11(10) and 12(k)(ii), will there be transboundary consultation on this aspect?*
- 7. For MS where industrialisation has been geographically limited/occurring more recently, can the establishment of FRAs be based upon reference conditions less than the last 70 years?*

¹ For example Article 11(2a) mandates that member states quantify; 1. Habitat areas and distribution; 2. Habitat not in good condition; 3. Favourable reference area (relative to 70 years); 4. Areas most suitable for restoration; 15 years of effort of research effort under MSFD have been insufficient to ascertain habitat areas and distribution.

8. *In situations where renewable energy infrastructure is already in place within protected areas, should this policy of avoidance be reconsidered for retention in terms of minimisation of further environmental impacts?*
9. *Is it envisaged that MS should establish a dedicated unit to lead, coordinate and implement this?*
10. *Art. 11(11) Requires public consultation on preparation of the National Restoration Plan. Will this be jointly coordinated for all MS?*

Article 12

Content of the national restoration plans

1. *The identification, quantification, spatial planning and costing of measures required to reach restoration targets will entail considerable work across government, agencies and other stakeholders. The scale and detail at which this is expected to be set out in the NRPs is currently unclear. When will the format of the NRPs, including details on content, as outlined in paragraph 4, be available?*
2. *Article 12(1) requires a plan timeframe to 2050 with intermediate milestones (set in Articles 4-10). How does this schedule relate to the timeframes for reporting by MS for Habitats Directive monitoring, the National Biodiversity Action Plan - noting Art. 11(7)(f) - and also for national climate action plans, river basin management plans – noting Art. 11(7)(c) and the national Biodiversity Sectoral Adaptation Plan – noting Art. 12(k)(iii)?*

Article 13

Submission of the draft national restoration plan

1. *Is the draft NRP effectively due by Q4 of 2024? This timeline is problematic, even if adequate resources are provided as consultation, including public participation, and agreement is required across a broad swathe of players. Will this be reconsidered?*

Article 14

Assessment of the national restoration plans

1. *Is the final NRP effectively due by Q4 of 2025, taking into account 6 months for the Commission to review the draft and an additional 6 months for the MS to finalise it?*

Article 15

Review of the national restoration plans

1. *Can the Commission provide the reasoning for the choice of different timescales for review and lack of alignment with other reporting requirements and whether there are implications for the efficiency or effectiveness of the regulation?*
2. *Given the rapidly increasing scientific evidence on climate change, is it likely that this review period will be more frequent?*
3. *Art. 15(2) – Does this mean that if declining status of listed habitats ‘becomes apparent’ before the 10 year duration of the NRP, then it is to be overhauled? What is ‘becomes apparent’ referring to? Revisions of the NRP will likely have consequent effects on revisions of other plans and policies within a MS.*

Article 16

Access to justice

1. *Will Cross-references to other EU Directives concerning Access to Information on the Environment and Public Participation be considered here to ensure coherence?*
2. *How does this provision relate to the existing access to justice provisions within the Habitats/Birds/SEA/EIA Directives?*
3. *Clarification is sought for the phrase “regardless of the role members of the public have played during the process for preparing and establishing the national restoration plan” as this does not appear to require any party to demonstrate standing. It would appear that, notwithstanding that the draft refers to national law in terms of standing rights for eNGOs, it automatically assumes that such organisations have standing and sufficient interest if they meet ‘any’ requirements under national law, whereas they should need to meet ‘all’ requirements. Impairment of right and sufficient interest are two separate tests above, but are being used interchangeably here. This has potential implications for the Directives and Regulations implementing the Aarhus Convention and for a significant number of cases currently before the Courts, including CJEU.*

Article 17

Monitoring

1. *Art 17(5) states:*
‘The monitoring in accordance with that paragraph, points (g) and (h), shall be carried out at least every six years and shall be coordinated with the reporting cycle under Article 17 of Directive 92/43/EEC’

Clarification is requested as to whether the word 'monitoring' above should be 'reporting', as per Article 17 of the Habitats Directive.

- 2. Art. 17(1)(b) – Given that the data for the area of urban green space and tree canopy cover in cities, towns and suburbs is already obtainable through Copernicus, why is this included for monitoring by MS?*
- 3. It is unclear what is required in terms of databases and monitoring, how it relates to existing monitoring and who would be responsible for undertaking this.*

Article 18

Reporting

- 1. When will the details of the reporting requirements be clarified to ensure that systems are designed during the preparatory phase to enable data to be appropriately collected and analysed to facilitate reporting?*
- 2. What are the proposals to ensure that the regulation promotes harmonisation of reporting and delivery between environmental directives in light of the recent Report on the harmonisation of EU environmental law published by the parliament²?*
- 3. The reporting cycles need to be clarified in relation to implementation of Arts. 13 and 14.*

² Squintani, L. 2022. Study on the harmonisation of EU Environmental Law. European Parliament. Pp 14).

POLAND

Preliminary questions and identify issues of concern on Chapter III and IV in a view of the next WPE meeting on Nature Restoration Regulation, which will take place on 30 September 2022.

- 1) Notwithstanding the need to rewrite Article 11(2)(a)(iii), so as to remove the reference to 70 years baseline, Poland would like to ask how and based on what indicators the forecast of changes in environmental conditions due to climate change have to be prepared?
- 2) Poland asks how to assess that the quality and size of the species' habitat required to achieve good status is appropriate (Article 11(2b))?
- 3) How an open and effective procedure in determining satisfactory levels of the various indicators referred to in Articles 8(1), 9(2) and 10(2) (Article 11(3) should look like?
- 4) On Article 11(5) - How "prioritization of restoration measures" while "identify synergies with climate change mitigation, climate change adaptation and disaster prevention" should look like?
- 5) How to ensure synergies of the national restoration plan (NRP) with other MS' plans? At what stage of work will the plans be made available with possibility of the modification? How is harmonization of NRPs between member countries to be achieved?
- 6) Do updates of NRPs made by member states as a result of ongoing monitoring (referred to in Article 15(1) and (2)) require EC approval?
- 7) How do revisions of NRPs in a 10-year perspective relate to the update resulting from Article 15(2), i.e. on the basis of monitoring carried out by member states?
- 8) Will the "supplementary measures" constitute a modification of the NRP referred to in Article 15(1)?
- 9) Taking into account the indicators proposed in the draft regulation, how should look like a monitoring of agricultural and forest ecosystems consistent with the monitoring required under Regulations (EU) 2018/841 and (EU) 2018/1999 (Article 17 (6))?

- 10) Poland points out that the condition of the habitats of bird species has not been monitored and reported so far pursuant to Art. 12 of the Birds Directive. Poland thinks that the development and adoption of common methods for assessing the condition of bird species is particularly important. In addition, Poland asks whether the improvement of the condition of habitats should cover habitats used in all phenological periods or, for example, only habitats used by a given species during the breeding period.
 - 11) How the Commission sees the relation between the six-year reporting cycle under the Habitats Directive and the monitoring requirements under Nature Restoration Law (NRL)?
 - 12) What is the purpose of reporting the progress in financing restoration measures every 3 years (Article 18 (2)(e))?
 - 13) Poland points out the need to clarify on what basis the EEA will provide the EC with an annual technical review of progress towards achieving the objectives and obligations set out on NRL to meet the requirements of the INSPIRE Directive and the Open Data Directive. Poland's detailed comments on INSPIRE has been submitted to the EC and published on 30.08.
 - 14) Referring to Art. 18 (3), what does the Commission understand by the detailed arrangements for the reporting?
 - 15) Referring to Art. 18 (7), what is the added value /purpose of this point? What does the Commission mean by adequacy?
 - 16) Does the European Commission intend to consult with the Member States on the development of a format for national recovery plans? If yes Poland would like to ask on which forum and according to which rules this work is planned. (Question related to Art. 12 (3))
 - 17) Does the European Commission plan to verify the existing sources of funding, launch new sources or support the member states financially in the preparation process of national recovery plan and other activities, e.g. developing a new methodology for assessing the condition of forest habitats and ecosystems, preparing and developing all necessary data in the field of forest ecosystems needed for development of a national reconstruction program, assessment of the condition of all forest ecosystems, as well as potential restitution (reconstruction)?
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SWEDEN

Following the call for questions from member states regarding the provisions in Chapters III and IV on the WPE on the 16th of September, Sweden would like to put forward the following questions pertaining to Articles 11-18 of the Commission proposal on Nature Restoration Regulation.

Article 11

SE would like a clarification regarding whether the required information in article **11.2(a)(ii) and (iv)** is expected to be geographically specific and presented on a map? If so, what is level of detail is expected in such a map?

SE would like further information regarding “agricultural and forest areas in need of restoration” as stated in article 11.4. Are such areas expected to be identified based on the requirements in Articles 9 and 10, or based on all relevant requirements in the NRL?

SE would like a clarification if landowners and other direct stakeholders are to be seen as parts of the “public”, as stated in article 11.11?

Article 12

SE seeks clarification regarding if the national restoration plan is expected to contain detailed maps of specific areas subject to restorations measures, or if a more comprehensive account of such areas per biogeographical region is sufficient? What does ”geographically referenced maps of those areas” in article 12.2(a) mean, more specifically?

According to Article 11.6, member states must ensure that the intended function of the go-to areas for renewable energy shall “remain unchanged”. What does this mean in practice?

Article 15

Article 15.2 establishes a requirement for member states to revise the national restoration plan 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. Furthermore article 15.3 states that Commission may request MSs to submit an updated draft national restoration plan with supplementary measures. SE seeks clarification regarding the process and timeframe for such revisions. How would a revision procedure relate to the procedural requirements in article 11, and more specifically the requirements set out in Articles 4 to 10 of Directive 2001/42/EC? Should any change or adjustment to the plan give rise to a right to judicial review according to article 16?

Article 16

According to article 16, Member States shall determine what constitutes an impairment of a right, thus determining whether an organization or individual should be granted access to a review procedure. Considering that the national restoration plans are only binding for member states, what could, in the view of the Commission, constitute such an impairment?

SE seeks further clarification on if the provisions in article 16 are equivalent with the provisions on access to justice in the Aarhus Convention.

Article 18

According to Article 18.2 (c) Member States shall electronically report the "location and extent of the areas subjected to restoration measures referred to in Article 4, Article 5 and Article 9(4), **including a geographically referenced map of those areas**". Could the commission clarify if this requirement also applies to habitats of species covered by article 4.3/5.3? What is level of detail is expected in such a report?

AUSTRIA

Ad chapter III)

General remark:

It is necessary to carry out comprehensive new data collection for the preparation of the National Restoration Plans. Two years including data collection, establishment of monitoring systems and finalizing of the plans is extremely ambitious.

Questions:

Are the mandatory national restoration plans meant to be a single plan per MS? Or could there also be the possibility to prepare more than one single plan per MS, e.g. sorted according to different types of ecosystems.

Is a restoration of habitat types within the already designated renewables go to areas even possible or shall restoration measures only be focused on areas not designated as renewables go to areas? How should the interests of restoration of ecosystems and expansion of renewable energies (designation of go to areas) be weighed up?

Ad chapter IV)

Questions:

When can we expect more detailed information on the planned monitoring methods for agro-ecosystems and forest ecosystems? There are existing monitoring systems for some of the indicators in Austria. To what extent can national systems be maintained and included?
