

## **DENMARK**

### *Nature Restoration Regulation - Comments on Article 5*

#### **General remarks**

DK welcomes the proposal on the Nature Restoration Regulation and generally supports a strengthening of the framework for nature restoration in the EU. We stress the importance of analyzing and clarifying the effects of proposal. In this regard, we appreciate the answers provided by the Commission during the working group meetings, which to a large extent has contributed to clarifying central aspects.

We have the following comments on Article 5 in relation to the preparation of the meeting in the Working Party on the Environment on October 11<sup>th</sup>. We are still at an early stage in our assessment of the proposal and maintain a general scrutiny reservation.

#### **Comments on Article 5**

In general our understanding is that Articles 4-5 are closely linked with existing targets under the Habitats Directive, but setting dates for fulfilment of these targets. However, Article 5 differs by including in Annex II a number of marine habitats which go beyond the marine habitats included under the Habitats Directive, in particular with the inclusion of group 7. It is important to note that Annex II covers all marine habitats in Danish waters and thus the total marine area. This is an important issue to consider, in relation to different aspects in article 5 as it makes the requirements different to the habitats included on land:

1. The provisions on no deterioration in Article 5.6 and 5.7 covering 100 pct. of the seafloor in Danish waters, subject to the non-fulfilment justifications provided in Article 5.8 and 5.9, is a significant obligation. Plans under REPower EU as well as other necessary activities, such as ensuring necessary supplies for instance from extraction of sand and gravel as well as infrastructure projects, will cause deterioration. Even activities such as shipping can negatively impact some of the listed habitat types. These activities are, however, important in order to secure supply chains of raw materials, mobility and thus ensure European strategic autonomy. If no deterioration is to be defined in the same manner as under the Water Framework Directive, it will be difficult to manage in relation to marine activities. We are unsure if the non-fulfilment justifications adequately cover all relevant circumstances. We are also not convinced that using individual justifications for each marine activity is an ideal solution and have difficulty in seeing how it corresponds with marine spatial planning according to the MSFD.

2. Furthermore, according to Article 5.2 Member States shall re-establish habitats "...in areas not covered by those habitat types." As all Danish marine area is covered by a listed habitat type, re-establishment would (unless in the case of sealed loss) mean losing one habitat in order to re-establish another. It warrants further discussion how this relates to the provisions on no deterioration in Article 5.6 and 5.7.
3. It is also noted that the non-fulfilment justifications are not related to Article 5.10. We believe this warrants further discussion.
4. Under the Marine Strategy Framework Directive (MSFD) there is an ongoing process (to be finished in 2022) to set thresholds for good environmental status for each habitat type (so called broad scale habitats) – many of which are the same as in Annex 2. Under the MSFD we are to set a threshold at European level of which percentage of each habitat can be in bad status and still achieve good environmental status overall. This shall be based on the best scientific rationale and will depend on a number of biological factors. There is currently insufficient scientific rationale for setting a precise threshold values, however it does not look likely to be 90 pct. It should therefore be clarified what the scientific justification is for the proposal in Article 5.10 to ensure 90 pct. in good condition for habitats not covered by the Habitats Directive. We also encourage clarification on how threshold values under MSFD and the 90 pct. requirement under the new regulation interrelates.

Finally, it should be considered that producing the required plans requires knowledge of the full extent of each habitat type in Annex II. Very few areas have adequately detailed mapping of the seafloor. It takes time and resources to have this full and detailed mapping. And we will most likely still have limited knowledge of which habitat types that should be restored where.

In conclusion, Article 5 has wide reaching consequences for management of the marine habitats. One solution could be to consider differentiating requirements for the habitats under the Habitats Directive and other marine habitats.

We have further specific questions to Annex II and will return with these at a later stage. This includes the inclusion of some habitats in both Annex I and II, as well as the specific definitions of which sub-habitats belong to which Habitats Directive habitat codes and why.

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Council of the European Union  
General Secretariat

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**LIMITE**

**ENV  
CLIMA  
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POLMAR**

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## **CONTRIBUTION**

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Nature Restoration Regulation - Comments from delegations on Chapter II (Articles 4-10), Chapter V (Articles 19-21) and Chapter VI (Articles 22-23)

Following the call for comments (WK 11714/2022 and WK12197/2022) and the exchange at the WPE meetings on 8 and 16 September 2022, delegations will find attached comments by DK, LV and additional comments by NL.

## **THE NETHERLANDS**

### **Comments on and questions relating to the text of the Draft Regulation on nature restoration COM(2022) 304 final – First reading**

#### *Chapter 2, articles 4 to 10*

##### Article 4

- Article 4, paragraph 1: how exactly does the obligation to put in place the necessary restoration measures in article 4 relate to the obligations arising from article 6, paragraphs 3 and 4 of the Habitats Directive? This question also refers to scope of marine areas in article 5.
- Article 4, paragraph 2: is an obligation to put in place the restoration measures that are necessary to re-establish the habitat types listed in Annex I in places not covered by those areas achievable? If not, is this obligation not worded too broadly? This question also refers to the scope of article 5.
- Article 4, paragraph 4, includes the following provision: “Areas where the habitat types listed in Annex I are in unknown condition shall be considered as not being in good condition.” This provision may impose an undesirable burden upon Member States in case of a lack of data. At this moment, we have the following questions:
  - how will the effectiveness of the required restoration measures be determined if the concerned habitat types are in unknown condition?
  - to what extent is this provision in line with the principles of the Water Framework Directive whereby action is required based on monitoring? How will both legal frameworks coexist in practice?
- Article 4, paragraphs 7 and 8: in the opinion of the Netherlands the obligation in paragraph 7 containing that Member States shall ensure that areas where the habitat types listed in Annex I occur and the obligations that restored sites as mentioned in paragraph 6 do not deteriorate is by far too strict. Also bearing in mind that paragraph 7 will in due time enter into force with the entire regulation, this paragraph will on the shorter term seriously interfere with the development of projects relating to other important public and social interests, in particular outside Natura 2000-sites, f.e. housing, energy transition and waterway maintenance in the Netherlands. What other options are available to prevent such foreseen implementation problems? This question also refers to the scope of article 5, more specific to the energy transition.

- Article 4, paragraph 8: because paragraph 8 relates to sites that firstly have to be restored similar difficulties are expected in the longer term. In the view of the Netherlands paragraph 8 cannot be performed in any other way than including a licensing procedure in national legislation, considering a case-by-case analysis is needed to conclude if no less damaging alternative solutions were available and the weighty requirement of an existing project of overriding public interest. This obligation goes beyond the obligation to halt deterioration within Natura 2000-sites (article 6, paragraph 2 Habitat Directive). A undesired legalization of nature legislation for projects outside Natura 2000-sites in the Netherlands (with extra research costs and a considerable administrative burden) is feared. What other options are available to prevent such foreseen implementation problems? This question also refers to the scope of article 5, more specific to the energy transition.
- Article 4, paragraph 6 and 7: how do the obligations arising from these two paragraphs relate to the obligations of article 6, paragraphs 1 and 2 of the Habitats Directive?
- Article 4, paragraph 8: the obligations relating to monitoring (article 17) relate to the areas subject to restoration measures. Does the assessment of the effects of a project has to be derived from the monitoring outcomes on the basis of article 17?
- Article 4, paragraphs 8 and 9: the grounds for exceptions are limited. Has a feasibility study about possible implementation problems been considered?
- Article 4, paragraph 8: to what extent does ‘a project of overriding interest’ differ from ‘a project authorized in accordance with Article 6, paragraph 4, of the Habitats Directive (as referred to in paragraph 9)?
- Article 4, paragraphs 8 and 9: to what extent do exception grounds in other applicable EU-legislation for a certain project still apply without prejudice to the obligations arising from the paragraphs 8 and 9? More particular this question is asked relating to the Water Framework Directive. This Directive allows other functions of the surface water concerned to be taken into consideration. If the answer to this question is affirmative, to what extent could be considered to include exception grounds of the Water Framework Directive in article 4 of this proposal?

## Article 6

- The Netherlands supports increasing the amount of green and strengthening of nature in urban areas. However, the diversity in the spatial structure of municipalities and in the possibilities and impossibilities for greenery in the city requires an approach tailored to the situation that leaves room for consideration at the local level. The Netherlands would like to enquire what the subsidiarity basis is for regulation of this matter at EU level.

## Article 7

- To what extent does the removal of barriers in order to achieve the objective of at least 25 000 km of rivers into free-flowing rivers in the Union by 2030 have the legal effect of a result obligation? Can be explained how the Member States' efforts in this regard will be assessed according to article 14, paragraph 2, since Member States have an obligation to achieve a common objective?
  - What room for consideration does ensue from article 7 to take into account that barriers in practice fulfil other purposes, f.e. water safety, shipping and energising.
  - To what extent are projects to make waterworks passable, for example with the construction of a fish pass, also permissible according to article 7, paragraph 2?
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## **LATVIA**

### **Written comments regarding the Proposal for a Regulation on Nature Restoration Law**

#### ***Comments on Article 9 – Restoration of agricultural ecosystems***

1. According to the COM clarification, in order to set rewetting targets (Article 9, point 4), MS should use the latest data available in GHG national reports when the regulation enters into force.

Question: What to do in a situation where in the future after the regulation enters into force, because of improving the accounting of GHG emissions (through research) or as a result of the mineralization of soil organic matter, ***the area of agriculture organic soils changes - what will happen to the restoration and rewetting target of agricultural organic soils, should the MS target be changed?***

2. According to the national strategic plan for the sustainable use of peat, the state (majority of peatlands/wetlands are in the ownership of state) and the peat industry have made commitments (including commitments for restoration of extracted peat sites) and peat extraction licenses have been issued. There are places where licenses have been issued, but peat extraction has not yet started or was started after 2020.

Question: Will rewetting at the sites where peat extraction will start after the entry into force of the regulation ***also can be counted in for fulfilling the target of restoring and rewetting of agricultural organic soils?***

3. In accordance with Article 9, point 4, the restoration of drained peatlands under land uses other than agriculture use can be included in the achievement of the rewetting target up to maximum of 20%. ***What is the justification for this flexibility threshold, 20%, why exactly 20%?***

#### ***Comments on Article 10 – Restoration of forest ecosystems***

4. We would like to draw the attention again to the provision on monitoring of forest data every 3 years. In Annex VI “LIST OF BIODIVERSITY INDICATORS FOR FOREST ECOSYSTEMS REFERRED TO IN ARTICLE 10(2)” it is stated that “the methodology used for data collection is: as developed and used by FOREST EUROPE, State of Europe's Forests 2020, FOREST EUROPE 2020, and in the description of national forest inventories”.

We would like to draw the attention that Forest Europe reports are prepared every five years and the cycle of National Forest inventory (NFI) in Latvia is also 5 years. These reporting provisions have to be harmonized. Changing the NFI methodology to obtain information on the forest indicators in 3-year cycle will create a disproportionate administrative and financial burden. Currently, it is possible to obtain interperiod data only by using mathematical methods, not measurements in nature.

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