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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Nature Restoration Regulation - Comments from a delegation 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 SE.

SWEDEN

Following the call for comments regarding Chapter II and chapter IV, Sweden would like to put forward the following preliminary comments pertaining to Articles 4-10 and 19-22 of the Commission proposal on Nature Restoration Regulation.

1.1 General comments

SE is still evaluating the proposal and retains the scrutiny reservation for Articles 4–10 and Articles 19–22.

SE sees an increased need for a continuous, long-term and sustainable recovery of biodiversity and resilient nature within the Union's land and sea areas through restoration of ecosystems, habitats and species. This is important to ensure climate adaptation, reach the Swedish national environmental objectives and for the EU to be able to live up to its own international commitments regarding biodiversity and related global goals within Agenda 2030.

SE therefore sees a need for relevant and ambitious, but at the same time realistic, restoration targets at EU level. It is important that the regulation offers enough flexibility to enable prioritization of cost-effective restoration measures that consider the varying conditions of member states and relevant public interests.

SE expects some of the requirements to be difficult to fulfil within the proposed time and some reach regardless of the time aspect. SE assesses that some goals may need to be reformulated. SE seeks to avoid double regulation and would like to stress the importance of ensuring that restoration efforts consider the societal development that has taken place parallel to the degradation of nature.

In general, we find that the information and assessments of decreased production potential, and associated costs in both agriculture and forestry is lacking. Local production of food, fodder, fibres (wood) as well as biomass for energy production is essential. SE is concerned about how the targets in chapter II will affect national supply and SEs contribution to the internal market. Based on sector specific analyses, Swedish authorities have also raised concerns that the Commission's impact assessment underestimates the costs for implementation.

SE would also like to emphasize the importance of a balance between restoration measures and monitoring and reporting efforts.

1.2 Articles 4 and 5

SE believes that restoration of habitats covered by the nature directives is needed and that extensive efforts may be necessary to reach the targets. The favourable reference areas to be established in the national restoration plans are of decisive importance for the implications on different MS of the requirements in Article 4 and Article 5. SE welcomes that favourable reference areas for different habitat types will be decided by the MS, but at the same time sees a need for comparability in restoration progress between MS.

SE expects that some of the proposed restoration targets in articles 4 and 5 will be difficult to reach within the timeframe stipulated, and in some cases regardless of the time frame. The latter particularly applies to the targets in Article 4(2) for re-establishment of semi-natural grassland habitats as well as forest habitats in need of traditional management practices. The negative trend we currently see in the agricultural sector, at least in Sweden, with decline in number of active farmers, the area of used farmland and grazing animals - as well as specialization and increased concentration, poses major challenges when it comes to maintaining the agricultural activities that are necessary for keeping the biodiversity in for example semi-natural grasslands.

Sustainable and competitive agriculture is therefore necessary to reach the goals of both the Farm to fork strategy as well as parts of the proposed restoration regulation. SE has since many years prioritized measures to stimulate private landowners and farmers to restore semi-natural grasslands as well as to continue with grazing animals to keep areas with high biodiversity in a good condition. Sweden also continues to prioritize economic support. Despite those efforts, traditional management practices have decreased significantly over the last decades. MS can only offer economical support to stimulate private landowners and others using the land in a certain way and cannot force farmers to start up or continue animal husbandry with extensive grazing of semi-natural grasslands. All in all, this poses considerable challenges when it comes to the ability for SE to deliver on the targets for habitats dependent on traditional management practices in article 4.

SE considers it vital to increase knowledge regarding the status of habitat types listed in Annex I and Annex II where a large proportion is in unknown condition. However, we question if it is appropriate to presuppose that all such areas are in an unfavourable condition, as this likely will lead to an overestimation of the actual restoration needs and a suboptimal allocation of resources.

The prohibition of deterioration in Article 4(6)/4(7) and 5(6)/5(7), which also applies outside the Natura 2000 network presupposes a complete mapping of habitats, that the habitats/ecosystems are protected from activities and measures that may cause deterioration, and, to the extent necessary, that they maintain an appropriate management over time. In many cases management practices, often including grazing, are needed to uphold the values on the areas. All in all, this will pose significant challenges and a strict non-deterioration requirement may in some cases be unreasonable or impossible to ensure.

Article 4(7) and 5(7) limits the use of property outside Natura 2000 and may cause unforeseen obstacles for both private and public enterprises. It is unclear how habitats outside the Natura 2000 network should be identified and designated, how property rights and rule of law can be protected and how an assessment of operations and projects with regard to the non-deterioration principle should function in practice. The cost of a strict non-deterioration requirement outside Natura 2000 is hard to assess but is expected to be very high both when it comes to handling land rights and implementing the administrative and legal system required. Given the far-reaching implications of the non-deterioration requirement and the fact that all MSs are required to reach the overarching targets in articles 4(1)/4(2) and 5(1)/5(2) regardless, it should be carefully considered if a strict non-deterioration requirement outside the Natura 2000 network is necessary and proportional. If a non-deterioration requirement is to be included in the regulation, it is important that it offers enough flexibility to avoid the hindering or delaying of projects and operations of great public interests, as well as unreasonable consequences for individual landowners and other holders of land-use rights.

As previously stated, SE cannot force private landowners to uphold traditional management practices which stresses the need for amendments in Article 4(8). SE can also see that a strict non-deterioration requirement may come in conflict with for example areas used for military training. Furthermore, it is important to avoid impeding projects and operations of great public interest, such as existent and expansion of defence operations, electric grids, and production of renewable energy.

Even if it is obvious that such operations constitute overriding public interests, the requirement to make a case-by-case assessment may still lead to delays and considerable administrative costs.

SE still needs further clarification from the Commission regarding the deterioration prohibitions and exceptions in articles 4(8)/4(9) and 5(8)/5(9):

- How is it intended that the prohibitions on deterioration should be applied in a legally secure manner in practice?
- Are the exemptions applicable to already existing operations?
- Is the meaning of the term "project" in Articles 4(8) c and 5(8) c the same as clarified in the case-law of the Court of Justices of the European Union regarding Article 6(3) of the Species and Habitats Directive?
- What type of projects may meet the condition of "overriding public interest"?

1.3 Article 6

Scope of application

It is essential to SE that the targets in article 6 are applied only in actual urban areas in order to fulfil their intended purpose, i.e. ensuring the restoration of urban ecosystems. The way article 6, together with article 3, now reads, article 6 may include vast rural areas and forests. SE have serious concerns that this would restrict growth and urban and infrastructure development.

An alternative approach to defining targets for urban green space and tree canopy cover and to measure the progress of reaching the targets would be to use the area of the *urban clusters* falling inside the LAU, instead of the total area of the whole LAU, when defining the baseline for the targets in article 6.

Urban clusters are clusters of contiguous grid cells of 1 km² with a density of at least 300 inhabitants per km² and a minimum population of 5 000. (This includes urban centres which are clusters with a higher population density). Urban clusters define urban areas. Accordingly, rural areas could be defined as all areas outside urban clusters.

A delimitation based on urban clusters would thus be compatible with the inherent structure of the regulation. It would not increase the geographical scope of application of article 6 in MS where LAU:s follow city borders, but would avoid bias induced by variations in the size of LAUs across MS. This would also ensure a robust regulation that would be able to adapt to the changing dynamics of urban land use over time.

In line with this, the amount of urban green space and urban tree canopy cover should only be measured within urban clusters and the targets in article 6 should be adjusted accordingly. For instance, the target in article 6.2, should not relate to the total area of the LAUs, but to the total area of the *urban clusters* inside the LAUs.

The targets in article 6 should not apply to rural areas. To achieve this, changes in both article 3 and article 6 are required.

The total area of the 144 Swedish municipalities that fall under the scope of article 6 amounts to appr. 161 000 km² or 38% of the total area. An increase of 5 % green space by 2050 would mean 8 000 km². As a reference, urban land according to national official statistics constitutes only, on average, 3 % of the total area of these municipalities, amounting to 4 392 km². (In comparison, 63% of the land in the concerned LAUs is covered by forests.) In order to comply with article 6.2, the green surface that would have to be added by 2050 would exceed the total current amount of artificial surface, making the target impossible to reach even in theory.

General comments

Targets for urban ecosystems should take into account local and regional conditions and needs, such as density and population growth and the characteristics of administrative and planning systems. This is particularly important as the targets in article 6 will affect spatial planning. SE sees considerable challenges in implementing the targets with regards to property rights and the constitutional local autonomy of Swedish municipalities. All restrictions on the municipal autonomy should be minimized. The costs of implementing the targets are, in our view, underestimated. This should be considered when assessing the proportionality of the targets, as well as the limitation of local self-determination and property rights. Given the far-reaching implications, a sufficient assessment of the impact on constitutional property rights has not been done and Sweden needs to analyse this further.

The targets should also leave more flexibility to MS to prioritize quality and function in restoring urban ecosystems.

The Repower EU-directive requires MS to prioritize artificial and built surfaces, such as rooftops, facades, parking areas, brownfields as well as degraded land not usable for agriculture when identifying land areas necessary for the installation of plants for renewable energy production (article 15 c). This will diminish the feasibility of implementing article 6 even further. SE would like to stress the importance of policy coherence and the need to avoid conflicting regulations.

Article 6.1

SE would like the aims and design of a no net loss-target to be considered further.

SE agrees that urban ecosystems should reach a sufficient level in all Member States. However, in line with the proportionality principle, a no net loss target should only apply up to this level, i.e. when a LAU in a MS has lower levels of urban green space. This would mean that losses of green space may have to be compensated for in cases where green space is a scarce resource at the local level. What constitutes a sufficient level is best determined locally so that account can be taken of the various conditions at LAU level (see also comments above regarding the scope of application).

Population growth, a need of public infrastructure etc. require the use of land, and even if one may have a goal of taking as little green areas as possible it may not always be avoidable. At the local level, it can be difficult to find alternative areas that do not contain greenery, especially in areas that already today have a high proportion of green space. This means that compensating losses may not always be proportional for example in cases where urban green space is already abundant.

Article 6.2

SE would prefer that the requirements to increase green space should only be applied in cases where sufficient levels are not yet achieved. (See comments under article 6.1). In this way, the current state of urban green space and tree canopy cover in each MS would be taken into account. If not, MSs that have high levels of urban green will be obliged to increase the amount of urban green more than MSs with lower levels of urban green. This cannot be regarded as proportionate in relation to the aims of the article.

Article 6.2 b

SE questions if legally binding targets for integrated urban green space is appropriate, as small-scale measures cannot be traced in Corinne data, the target will be difficult to monitor.

While SE acknowledges the ambition of integrating urban green space into existing and new buildings and infrastructure developments, measures such as green roofs is only expected to have a limited impact in a Swedish context as local climate. Other aspects that affect an actual implementation can be, among other things, humidity restrictions and fire safety regulations and culture heritage.

Article 3 – reference to Copernicus data

The proposed definitions of “urban green space” and “urban tree canopy cover” in articles 3(13) and 3(14) respectively are not clear. Consequently, the consequences of the targets in article 6 cannot be fully analysed.

SE would like to stress that the scope of data should preferably be limited to green space and tree canopy cover that exists within urban areas. First, it is important to define what is actually urban (see our comment under “scope of application”). Secondly, a more open definition of what type of green that is included in article 3(13) and 3(14) is preferred to the current list, that can be interpreted as Corinne Land Cover classes and therefore creates ambiguities.

It is not clear if the scope of application is limited to the listed selection of Corinne Land Cover classes or what purpose the list of classes serves. Also, the selection of classes is not necessarily representative for the types of green that could be relevant. As a consequence, changes in the actual urban environment and urban ecosystems may not show correctly, which in turn may affect the choice and prioritising of solutions to reach the target, leading to the opposite effect to the intended.

Furthermore, some Copernicus data products only cover a limited portion of LAUs in some Member States and small-scale measures, such as smaller parks, green roofs and buildings and courtyards, cannot be traced in Corinne data. SE would also like a clarification regarding how MS are expected to monitor and report measures that aren't traceable in Copernicus.

1.4 Article 7

SE notes that clear definitions of *free-flowing rivers* and *barriers to longitudinal and lateral connectivity* are currently lacking. Such definitions would facilitate the development of uniform criteria and methods for the inventory of barriers to longitudinal and lateral connectivity referred to in Article 7(1).

1.5 Article 8

It is important that the method is developed in close co-operation with the MS. The method should be cost-effective and take into account that populations of pollinators can show significant variations between individual years and locations depending on for instance climate and food availability.

1.6 Article 9

SE agrees on the importance of enhancing biodiversity and ecosystem services in agricultural ecosystems. However, agriculture land constitutes a minor part of the Swedish land use, taking up about 8 percent of the surface. Due to both climate conditions and soil quality in the northern parts of Sweden, the possibilities to expand the agricultural area to compensate for the consequences of a less intensive production is low. A reduced agricultural production within the MS would affect the capacity of food supply and security which is already low, which needs to be considered both in a short and long term.

Article 9(1) contains a general requirement to put in place restoration measures necessary to enhance biodiversity in agricultural ecosystems. Answering a previous question from SE, the Commission has clarified that this requirement is closely linked to article 11(4), which states that MSs shall identify and map the agricultural and forest areas in need of restoration to enhance connectivity and landscape diversity. SE shares the opinion that ecological connectivity in general is of great importance and should be given considerable attention in the national restoration plans but finds that the provisions in article 9(1) are lacking in clarity when it comes to the specific requirements and starting points. This also applies to the corresponding obligations in article 10(1).

SE welcomes that MSs are to identify the *satisfactory levels* for the indicators in article 9(2). SE considers it important that the MSs right to define satisfactory levels themselves is not limited by implementing acts, and that the mandate for the commission to change the implication of the requirements through delegated acts should be clearly defined and limited.

SE deems both the *grassland butterfly index* and the *farmland bird index* in Article 9(2) and 9(3) to be relevant but envisage considerable challenges when it comes to turning the current negative trend by 2030. It also needs to be considered that the population trends of migrating farmland bird species included in the farmland bird index also depend on factors that can't be controlled within the MS.

SE questions the added value of including the index for stock of *organic carbon in cropland mineral soil* in the restoration regulation as carbon uptake is already covered by the LULUCF regulation.

The *high-diversity landscape features index* in para 9(2) (c) should be supplemented to also include transition zones between forest and agricultural land (in SE often classified as forest land). In practice, this feature has similar biological functions in Sweden as hedges in other EU regions and is of great value for biodiversity in the adjacent agricultural landscape.

SE would prefer that high diversity landscape features should be allowed to be under productive agricultural use as long as this is positive or neutral with regards to their value for biodiversity. More specifically, we question the rationale to explicitly exclude grazed areas from the high-diversity landscape features referred to in Article 9(2) (c). In Sweden these areas are not economically attractive as fodder sources while economic support is necessary to ensure continued use/grazing. According to Annex IV, landscape features used for grazing or treated with fertilizers or pesticides may not be included in the indicator. Fertilizers and plant protection products are not used on semi-natural grasslands in SE. While grazing can be perceived as an ecological disturbance, it is a prerequisite for preserving the high biological (and cultural heritage) values of many high diversity landscape features in Sweden, such as small wetlands, stonewalls, cairns and solitary trees, often included in the grassland areas. Semi-natural pastures in SE typically include an abundance of different kinds of landscape elements. Small semi-natural grasslands in areas dominated by large fields can also be seen as landscape features in their own right, as they contribute to landscape diversity in a similar way as the landscape features listed in Annex IV. SE also wants to stress the need for flexibility regarding annex IV and VII and that it should not be seen as exhaustive lists. Additional elements or measures could be valid based on regional and local conditions in MS and when new knowledge is generated. SE is seeking detailed information on how the method for measuring landscape elements by Lucas identifies the elements and if the findings will be validated in collaboration with MS.

Restoration of drained peatlands is, in addition to being important for climate mitigation and adaption, also of great importance for biodiversity and water management. Sweden has recently launched a comprehensive scheme for restoration of drained peatland. SE welcomes the flexibility offered by the fact that MSs can account for restoration measures in drained peatlands affected by peat extraction as well as restoration measures in drained peatlands in the forest landscape. However, we have potential concerns regarding rewetting of drained arable land where major changes in land use have taken place. In such cases, rewetting may not be possible without negative impact on adjacent arable land, buildings, or important infrastructure. Further evaluation is necessary to ensure that article 9(4) offers enough flexibility to handle such issues, and that the restoration goals proposed are feasible in a national context. The time schedule also needs further consideration since rewetting will require identifying the right areas, legal permits and often considerable planning and constructional work. Furthermore, we have concerns that the severe target for rewetting the most productive agricultural land would lead to high costs, reduced food production and questionable costs-efficiency.

Many of the restored areas will need some maintenance to keep up the wanted new conditions. This may include a need for grazing and hay cutting, that will compete with the needs in the semi-natural grasslands.

1.7 Article 10

SE would like to stress the importance of safeguarding national competence in forestry issues and thereby also the importance of considering regional and local conditions and all dimensions of the concept of sustainability when discussing this regulation. SE welcomes that MSs are to identify the satisfactory levels for the indicators in article 10(2). SE considers it important that the MSs right to define satisfactory levels themselves is not limited by implementing acts and that the mandate to change the implication of the requirements through delegated acts should be limited.

SE mainly considers the indicators for *dead wood*, *share of forest with uneven-aged structure* and *common forest birds* in Article 10(2) to be relevant in a Swedish context. The indicator *forest connectivity* has a lower relevance since seems to lack a qualitative component. From an ecological point of view, connectivity in the forest landscape is highly dependent on the distribution and density of specific types of forest habitats and substrates, which is not taken into account in the proposed indicator.

SE questions the added value of including *the stock of organic carbon* as an indicator in the proposal, as emission and sequestration of organic carbon is already regulated and monitored within the LULUCF regulation.

SE questions the rationale for limiting the indicator for forest age structure to forest available for wood supply (FAWS). In practice, this could potentially lead to a negative trend for the indicator *uneven aged forest* if a MS imposes strict protection of large areas of uneven aged forests during a reporting cycle.

1.8 Article 19

In general, SE is of the view that the essential elements in Articles 9–10 should be regulated directly in the regulation. Delegated and implementing acts should be limited to issues and factors of less importance and should not be allowed to change the implication of the requirements.

SE finds that the purpose/objectives of the mandate to adopt delegated acts needs to be further clarified in Article 19, especially in paras 1, 2, 5 and 7. According to Article 290.1, second paragraph of the Treaty, the objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative act. For example, article 19(1) – (2) of the proposal currently lacks objectives for the delegated powers to amend Annexes I and II.

1.9 Article 21

SE would prefer if Article 21 could be amended in such a way that, if the committee does not issue an opinion, the Commission shall not adopt the draft implementing act. Such an amendment is in line with the corresponding provisions on committee procedure in other legislative acts in the environmental field and imply that the starting point is that an implementing act can only be adopted if the proposal gathers a qualified majority within the committee.

The amendment could be drafted as for example the provision in Article 16a (2) para 2 of the Wild Birds Directive (2009/147/EC): “Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.”
