GERMANY

Commission proposal on Nature Restoration

Article 9

- **How do Article 9 (2)(b) and Article 10 (2)(f) affect the provisions planned under the EU Soil Health Law?**
- **There are no reference values for the indicators named in Article 9 (2) as to when satisfactory levels are achieved. Under Article 11 (3), member states must define these satisfactory levels by 2030. Does the Commission plan to support this procedure or assessment process, for instance by formulating methodological standards for the assessment? Article 9 (2)(b) "stock of organic carbon in cropland mineral soils":**
  - **Would it be possible to add another indicator (or several indicators) for determining soil status at a later stage, e.g. an indicator focussing on soil biodiversity?**
  - **Does it make sense to gear the indicator solely to cropland mineral soils, given that in particular grassland mineral soil can be an important carbon sink?**
  - **We do not consider monitoring at three-year intervals to be useful for the indicator, as this period is too short for durable changes to become apparent. We ask the Commission to justify the three-year interval. Were synergies to other reporting obligations taken into consideration?**

- **Article 9 (2)(c) Annex IV indicators in general**
  - **The proposed indicators, especially the "grassland butterfly index", are heavily influenced by changes in climate. This means that changes in trends cannot be attributed solely to restoration measures. Will the Commission take into account the possibility that targets for agricultural ecosystems cannot be achieved due to climate change?**
  - **Reporting every three years as envisaged makes it barely possible for indicator trends in agricultural ecosystems to be detected in any statistically meaningful way. Uncertainties are also very high (especially with regard to the population indicator "grassland butterfly index").**

- **Article 9 (2)(c) Annex IV indicator "share of agricultural land with high diversity landscape features"**
  - **We see a need for further discussion regarding the indicator "share of agricultural land with high diversity landscape features". For instance, in our opinion, the requirements for productive trees and agroforestry systems are not logical and may need to be specified further. Does the Commission see any potential for modifying this indicator?**
    Some detailed comments in the following:

1. For example fallow (grass)land with (fruit) trees can be counted as landscape features but an extensively grazed meadow orchard that is mowed once or twice for hay or an extensive pasture forest cannot, even though the trees are identical to those on fallow grassland. Remnant trees (single trees/copses) on a cropland orchard would also count as landscape features.
2. Using the term "non-productive" means that a field margin that is mulched 8 times a year can count as a landscape feature, but a field margin that is grazed once a year cannot. That means that areas characterised by many smaller elements, such as juniper heathland, would not be eligible for consideration.
3. These provisions are inconsistent, especially given the fact that modified, extensive grazing e.g. by sheep, helps conserve and promote biodiversity.
4. There is no clear methodology for identifying areas. Without such a methodology, the indicator cannot be evaluated. We do not consider LUCAS to be suitable, as the system only provides point information, which can lead to the area being underestimated, especially in the case of copses.
5. We do not consider combining data from different systems, e.g. LUCAS and InVeKoS data to be constructive. This would require double counting to be ruled out, which would entail an unacceptable burden.

- Do peatland restorations count? How should large fallow areas in the open landscape be assessed if they have turned into reed banks or shallow water bodies?
- The definition should be interpreted as uniformly as possible throughout the EU.

- **Article 9 (2)(c) Annex IV indicators in general "grassland butterfly index"**
  - **A national species list should be drawn up or suggested in the same way as for farmland birds (Annex V). The proposed indicator is composed of species "considered to be characteristic of European grasslands" (Annex IV). This European species list is only of limited use for Germany.**
- **Methodological standards (minimum requirements) for a monitoring programme should be developed and prescribed.**
- **Article 9 (3) "common farmland bird index"**
  - **The option should be given to modify the national species list under Annex V.**

- **Article 9 (4)**
  This should be based on the definition of organic soils in line with the IPCC definition for climate-relevant organic soils.

- **In the Commission's view, how do the terms restoration and rewetting relate to each other? As we understand it, drained peatlands need to be rewetted as a prerequisite for restoration. What does the Commission understand by rewetting? Partial wetting, complete wetting? In the Commission's view, what other measures for restoring drained peatlands are there?**

<u>Article 10</u>

- **With regard to the indicators listed in Article 10 (2), we are still conducting the expert review and internal discussions. In particular, their implementability and validity at national level are currently being examined. If necessary, we will make proposals for supplements and/or changes on this at a later date.**

- **The assessment of "satisfactory levels" raises the question of the reference value. Completely different results can be obtained depending on whether a national average is identified or regional sub-units are used for the evaluation. In the Commission's view, how should a distinction be drawn here?**

- **In most cases, the rate of change in a forest is slow and extends over many years. In light of this, the appropriateness of reporting every three years should be reviewed, also considering the high cost and effort it entails. It should be reviewed, for forests in particular, whether a reporting interval of five years would allow sufficiently robust statements on progress in the desired trends.**

- **Article 10 (2)(f) "stock of organic carbon"**
    - **Does this indicator for the restoration of forest ecosystems include both above-ground and below-ground carbon stocks – especially in the case of forested peat soils?**

<u>Articles 9 and 10</u>

Annexes IV and VI (list of indicators)

- **If member states have already developed their own indicators and monitoring procedures which they report on at national level, can they also use these as part of their reporting at EU level? Furthermore, in that context would specific variations on the methodology prescribed in Annex VI be conceivable in principle? This would reduce the workload, avoid duplication of work and improve acceptance. How can a balance be achieved between a Europe-wide approach with the necessary comparability and a certain degree of flexibility and adaptation to national circumstances?**

- **Will the member states be generally involved in the (further) development or design of indicators and monitoring methodologies? For instance, the available knowledge and experience in the member states could be used to achieve the best possible synergies with existing indicators and surveying methods, thus minimising possible contradictions.**

Council of the European Union
General Secretariat

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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 DE, ES, IE, IT, NL and AT on Chapter II (Articles 4-10), Chapter V (Articles 19-21) and Chapter VI (Articles 22-23) of the Nature Restoration Regulation.

Please note that DE has already submitted comments to Articles 4-7 on 19 September 2022 (WK 12236/2022).

IRELAND

Department of Agriculture, Food and the Marine (DAFM) comments regarding Chapter II of the proposed Nature Restoration Regulation, 28/09/22

Chapter II - Restoration Targets And Obligations

Article 4

Coastal – it is not clear why coastal is separated from "*Marine*" in Article 5. It could be that marine is sub-tidal and coastal is above the water. A definition should be presented, possibly in Article 3.

Article 5

Article 5 deals specifically with the Restoration of marine ecosystems. 5.1 sets ambitious targets for MS to restore listed habitats which are not in "*good condition*". This requires MS to be able to quantify the area of specific habitats. This is a significant challenge in the marine environment which can be dynamic and also requires major mapping and monitoring effort (e.g., the INFOMAR mapping programme, and Natura site investigations). Secondly it requires MS to assess and define good condition for habitats that have not been observed in a pristine state, may naturally vary and which may have very different recoverability potential.

Article 6

No comments from DAFM.

Article 7

No comments from DAFM.

Article 8

DAFM supports the ambition set out under Article 8. The Commission has indicated that Implementing Acts will be used to establish the monitoring methodologies. However, in order to deliver meaningful reports on population trends by 2030, monitoring must commence a number of years in advance of 2030. This may raise challenges for some (or all) MS depending on the complexity of the methodology and analysis required. Therefore, the 2030 date for MS to prove reversal of decline may not be appropriate depending on the timelines anticipated for the development and approval of the Implementing Acts.

In support of observations made by SE and FI, it is necessary to set out which habitats and ecosystems are intended to be covered by the monitoring and the costs associated with monitoring should be accounted for including sources of funding for such monitoring programmes. The Regulation or associated Implementing Act(s) on monitoring should specify who can complete the monitoring, i.e., is a citizen science approach acceptable or must expert entomologists be employed. The sampling effort required should also be defined.

Article 9

The Commission has indicated that Article 17 will define the baseline in relation to Article 9(2). Will this be in line with the timeline of CAP reporting, and if not, will it be adjusted to same in order to avoid creating an additional administrative burden regarding reporting?

Whilst Recital 55 sets out economic uses on rewetted areas, many of these activities are not well established nationally, e.g., paludiculture. If a MS identifies economic activity which they believe to be compatible with rewetting will this be accepted or will justification and approval from the Commission be required?

A definitive quantitative value of organic soils in agricultural use constituting drained peatlands is not currently available nationally. IE continue to engage with JRC SEPLA Programme and other national mapping and assessment works. If such a figure is not available on the date of implementation of this Regulation, what figure will be accepted for assessment against achieving targets – estimate or will updated definitive values mid-stream in delivering of the national restoration plan be required?

In order to meet 2050 targets, it is essential that the flexibility regarding peat extraction sites is retained. Consideration must be given to the definition of these areas to ensure that they are aligned with our understanding of the scope of these lands, for example, the total area of peat extraction nationally is not currently known in Ireland. It must also be recognised that there are large uncertainties in the underlying data associated with these targets.

Article 10

DAFM requests that the composition of Irish forests (versus that of other MSs, where the degree of naturalness within the forest estate is higher) is recognised. It is relatively straight-forward to enhance biodiversity reflective of Ireland's native woodlands, within woodlands that already have elements of such biodiversity. However, this is increasingly difficult to achieve in existing forests planted commercially using non-native conifers on former agricultural land, as elements of native woodland biodiversity would be limited and achieving indicators of such types would be increasingly difficult. Therefore, there is possibly a need for a matrix of indicators, regarding what should be achieved in forests already showing elements of the native forest ecosystem (in which targets reflecting Ireland native woodland types and composite might dominate), and forests which are far removed from the native forest ecosystem (in which the achievement of more general principles of forest biodiversity would apply, e.g. age and species diversification, edge habitat creation, strategic open spaces, etc.).

Otherwise, MS such as Ireland, with its domination of commercial conifers within the national forest estate, would be penalised.

Also, the measures identified must reflect limitations on the rate of change hard-wired into many of Ireland's forests, due to previous practices, namely the predominance of uniformly-aged monocultures, many on peat soils. The potential regarding the rate of change regarding the introduction of biodiversity measures is limited by the scale of change needed and by concerns regarding windblow, which limit the ability to effect changes in canopy composition mid-rotation.

It must be clarified whether the measures are to be applied to every theoretical forest hectare or more selectively. There is a strong argument to focus on forests where the capacity for significant biodiversity enhancement is greatest, and not on other forests where, due to high productivity, closeness to market and other economic factors, are better left earmarked for timber production (while still satisfying legal requirements such as Appropriate Assessment, Environmental Impact Assessment and Water Framework Directive etc.). Otherwise, this would dilute biodiversity impact, and would place an undue burden on forests better suited for timber (with knock-on function regarding sequestration within timber products).

Measures should reflect the reliance on clearfell / reforestation and be more geared towards what can be achieved at reforestation, when significant structural change is achievable (versus mid-rotation). The measures identified most be proven to be effective in enhancing forest biodiversity, and readily quantifiable. In relation to restoration, i.e., forest removal to enable the restoration of former wetland habitat – leaving aside the mechanisms to encourage owners to bring about change, restoration targets must take into account the potential for restoration. There are many situations where it would prove very difficult or impossible to restore (via rewetting and other measures) a peatland habitat after forest removal.)

The points above are also relevant regarding choice of indicators. Given the composition of much of our forest estate, it would be more difficult for Ireland to show progress in relation to indicators more reflective of native woodland ecosystems. Also, again, the structure of many of Ireland's forests limits the rate of change possible. Therefore, the indicators should be two-tiered, one for native or semi-natural forests (where the indicators can be more specific to those particular ecosystems) and another for non-native forests (where the indicators should be based on achieving more general goals towards species, age and structural diversity, increased amounts of native species used strategically (e.g., to create edge habitats). There would be an unfair burden on Ireland if the indicators selected are more appropriate to what can be achieved within native woodlands with significant core habitat, versus for example small-scale conifer plantations scattered amongst farm holdings.

Regarding reporting timeframe, this must reflect the nature of many of Ireland's forests, where significant structural change is only possible at reforestation stage

Associated Annexes

Annex II

The marine habitats listed in Annex II are much more extensive than those in 1992 EC Habitats Directive (92/43/EC). Mapping out and checking the extent of listed habitat would take some time and was not possible at this stage. The rational for listing Soft sediments (above 1000 meters of depth) and not those below 1000m is not clear. Ireland has extensive marine habitat deeper than 1000m and regulations like the Deep Water Assess Regulation has banned bottom trawling deeper than 800m.

Annex III

Article 5.3 states that Member States shall put in place the restoration measures for the marine habitats of species listed in Annex III. The key species for Ireland are basking shark (*Cetorhinus maximus*), white skate (*Raja alba*), angel shark (*Squatina squatina*), salmon (*Salmo salar*) and sea trout (*Salmo trutta*). Basking shark is a widely migratory pelagic species which spends some of its time in Irish waters so this wording would have broad implications for the whole EEZ.

Whereas white skate and angel shark are critically endangered with very limited data on their occurrence and habitat preference, which is a very different challenge. Both salmon and sea trout are anadromous species spending time in freshwater and marine habitats. Both species populations have declined significantly and despite active management efforts it is not clear how populations can be restored due to an unquantified mix of possible anthropogenic and ecosystem pressures.

Article 5.6 and Article 5.10.a imply MS would need to have on going monitoring programmes and demonstrate improvements over time. In a marine context that would need to be properly resourced. Current monitoring programmes are focused on a species more that habitat level.

Annex VI

Indicators must reflect nature of Irish forests and their scale and distribution. As outlined above, indicators and targets may be significantly more achievable in other MS than in Ireland. For example, the small, scattered nature of many of our farm forests should be considered in the design of the 'forest connectivity' indicator, and how progress is measured under this indicator. We assume also that the indicators set reflect the lower number of specialist forest species in Ireland compared to the European mainland, due to the disappearance of the land bridge after the last Ice Age.

Annex VII

Currently the list of restoration measures of relevance to sea fisheries are very limited – Examples 23-28. Annex VII should be presented as a non-exhaustive list of examples.
To be successful the objectives of this Regulation need to be very clear and measurable, based on scientific evidence and accompanied by well-resourced monitoring programmes. In a marine context for example a phased introduction would be appropriate e.g., use no take zones to assess the scope for 'change' to some new status and then provide for wider implementation if there are demonstrable positive outcomes. This type of approach should be listed in Annex VII.

Example 28 states: “Reduce various forms of marine pollution, such as nutrient loading, noise pollution and plastic waste.” While not strictly a DAFM concern, it should eb noted that reduction of marine noise pollution is not consistent with other policies which will increase industrialisation of marine space to reach climate change targets through the introduction of offshore renewable energy installations.

Ends.

SPAIN

Proposal for a Regulation of the European Parliament and of the Council on Nature Restoration

Specific comments on Articles 4-10

General Comments

- With respect to terrestrial, coastal and freshwater ecosystems (art. 4), whose habitats are covered by existing European Union regulations, it will be necessary to couple obligations of the present proposal with those already in force deriving from the Habitats Directive in order to facilitate an effective and correct implementation of both rules, to avoid duplication or additional burdens.
- With regard to marine ecosystems (art. 5), the proposal sets equal restoration objectives for land and sea, which could be understandable and necessary in the context of the global protection and conservation of the oceans that our country promotes. However, the current uncertainty about marine ecosystems (distribution and conservation status), associated with the complexity of these ecosystems, means that recovery solutions are not necessarily comparable to those that may exist for the restoration of terrestrial ecosystems. This should be taken into account in this discussion process.
- Regarding aquatic ecosystems (art. 7), we positively appreciate that the proposal consolidates the work that has been carried out with regard to the recovery of fluvial space, the demolition of barriers or the removal and repositioning of levees, and we therefore feel that the text is well on the way.
- Concerning the issue of pollinators (art. 8) it is considered to be a very ambitious and complex objective, including its verification (due to the fact that the European pollinator monitoring system will probably not start before 2025, which we support, however, because of the urgency and need to reverse the bad situation of pollinators.

Specific Comments

Article 4.

1. Member States shall put in place the restoration measures that are necessary to improve to good condition areas of habitat types listed in Annex I which are not in good condition. Such measures shall be in place on at least 30 % of the area of each group of habitat types listed in Annex I that is not in good condition, as quantified in the national restoration plan referred to in Article 12, by 2030, on at least 60 % by 2040, and on at least 90 % by 2050.

It should be clarified even in the text of the regulation that the baseline for the evaluation of the areas on which restoration measures are implemented should be the reporting of art. 17 Habitat Directive of 2019, corresponding to the six-year period 2013-2018.

In "Member States shall put in place ~~the~~ restoration measures ~~that are necessary~~ to improve to good condition...", it would be better to delete the text crossed out here behind. It does not undermine the obligation specifically addressed in this paragraph (i.e. to implement measures to improve the structure and functioning of degraded habitat types), but may allow more operational flexibility for MS.

It should be clarified whether the quantitative targets refer to the Union level or to the territory of each Member State.

2. Member States shall put in place the restoration measures that are necessary to re-establish the habitat types listed in Annex I in areas not covered by those habitat types. Such measures shall be in place on areas representing at least 30 % of the additional overall surface needed to reach the total favourable reference area of each group of habitat types listed in Annex I, as quantified in the national restoration plan referred to in Article 12, by 2030, at least 60 % of that surface by 2040, and 100 % of that surface by 2050.

In "Member States shall put in place ~~the~~ restoration measures ~~that are necessary~~ to improve to good condition...", it would be better to delete the text crossed out here behind. It does not undermine the obligation specifically addressed in this paragraph (i.e. to implement measures to improve the structure and functioning of degraded habitat types), but may allow more operational flexibility for MS.

3. Member States shall put in place the restoration measures for the terrestrial, coastal and freshwater habitats of the species listed in Annexes II, IV and V to Directive 92/43/EEC and of the terrestrial, coastal and freshwater habitats of wild birds covered by Directive 2009/147/EC that are necessary to improve the quality and quantity of those habitats, including by re-establishing them, and to enhance connectivity, until sufficient quality and quantity of those habitats is achieved.

The concepts of "sufficient quality" and "sufficient quantity" of habitat for species are defined in Article 3 of the proposed Regulation itself, as those "that allow their ecological needs to be satisfied at any stage of their biological cycle, so that they are maintained in the long term as a viable component of their habitat within their natural range". This definition is not very specific, although we understand the difficulty of specifying it further. Clarify whether these concepts equate to a situation in which the evaluation of the parameter "habitat" for the evaluation of a species in Article 17 is favourable (in line with the next reporting format).

In any case, the question arises as to how this provision is to be interpreted in relation to the obligations of the Habitats Directive and the information resulting from the monitoring reports. Clarify whether this obligation would only apply to those species whose quality and/or quantity of habitat is assessed (according to Art. 17) as insufficient and is a limiting factor for achieving the favourable conservation status of the species. If so it would be convenient to include some precision in the text of the articles to specify that this provision applies only when it is relevant, i.e., when the quality and quantity of the habitat has been identified as a limiting factor to achieve the favourable conservation status of the species.

On the other hand, we are doubtful that this obligation extends to species in Annex V of the Habitats Directive, considering that the Directive does not establish obligations regarding the habitats of these Annex V species.

In "Member States shall put in place ~~the~~ restoration measures ~~that are necessary~~ to improve to good condition...", it would be better to delete the text crossed out here behind. It does not undermine the obligation specifically addressed in this paragraph (i.e. to implement measures to improve the structure and functioning of degraded habitat types), but may allow more operational flexibility for MS.

4. The determination of the most suitable areas for restoration measures in accordance with paragraphs 1, 2 and 3 of this Article shall be based on the best available knowledge and the latest scientific evidence of the condition of the habitat types listed in Annex I, measured by the structure and functions which are necessary for their long-term maintenance including their typical species, as referred to in Article 1(e) of Directive 92/43/EEC, and of the quality and quantity of the habitats of the species referred to in paragraph 3 of this Article. Areas where the habitat types listed in Annex I are in unknown condition shall be considered as not being in good condition.

It should be made clear in the text, that indeed the identification of areas for restoration measures must be based on the information in the reports of art 17. But it remains unclear whether there are minimum or maximum:

Are restoration measures expected for the habitats of all the species of the Directive? only for those that, according to article 17, have insufficient habitat? We understand that it is the latter, but this should be further clarified in the text.

In addition to the areas for the application of restoration measures, the determination of the restoration techniques to be used and the subsequent monitoring of the actions carried out should also be based on the best available knowledge.

In the final sentence ("Areas where the habitat types listed in Annex I are in unknown condition shall be considered as not being in good condition"), it should be clarified that this consideration is only related to the 'determination of the most suitable areas for carrying out restoration measures' in accordance with paragraph 1 and, partially (i.e. as regards the 'quality' of the habitats of the species), with paragraph 3 of this article.

On the other hand, and in relation to the same sentence, to consider as 'not in good condition' those areas in which a habitat type is present and in which its condition (i.e. its structure and functioning) is 'unknown' seems to us inappropriate in relation specifically to the purpose of this paragraph, which is to determine, among all the areas in which there are habitat types and species habitats demanding restoration, those most suitable for it.

5. The restoration measures referred to in paragraphs 1 and 2 shall consider the need for improved connectivity between the habitat types listed in Annex I and take into account the ecological requirements of the species referred to in paragraph 3 that occur in those habitat types.
No comments

6. Member States shall ensure that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show a continuous improvement in the condition of the habitat types listed in Annex I until good condition is reached, and a continuous improvement of the quality of the habitats of the species referred to in paragraph 3, until the sufficient quality of those habitats is reached. Member States shall ensure that areas in which good condition has been reached, and in which the sufficient quality of the habitats of the species has been reached, do not deteriorate.

A disclaimer should be included about natural disasters, a caveat at the end such as "Those areas where habitat types or habitats of the species are affected by natural disasters are not to be considered in this evaluation".

On the other hand, the content of this paragraph again seems to be redundant with what is already established in paragraph 3. It generates confusion because reference is only made here to "sufficient quality" and not to "sufficient quantity" (which is mentioned in paragraph 3). It is not well understood why the aspect of sufficient quantity of habitat for the species is ignored.

7. Member States shall ensure that areas where the habitat types listed in Annex I occur do not deteriorate.
No comments

8. Outside Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 and 7 is justified if it is caused by:
(a) force majeure;
(b) unavoidable habitat transformations which are directly caused by climate change; or
(c) a project of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis.

Linked to what was stated above in the comments of paragraph 6, it should be made explicit in (a) 'natural disasters'.

The proposal contains an absolutely necessary obligation that is the non-deterioration of restored areas, which is totally pertinent. However, some exceptions to this are also established, which in one of the points are linked to force majeure. If this concept is not circumscribed to a well defined and delimited situation, we could be leaving the door open to such deterioration. For this reason, it is necessary to delimit these causes of force majeure.

9. For Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 and 7, is justified if it is caused by:
(a) force majeure;
(b) unavoidable habitat transformations which are directly caused by climate change: or
(c) a plan or project authorised in accordance with Article 6(4) of the Directive 92/43/EEC.

Also linked to what was stated above, it should be made explicit in (a) 'natural disasters'.
The proposal contains an absolutely necessary obligation that is the non-deterioration of restored areas, which is totally pertinent. However, some exceptions to this are also established, which in one of the points are linked to force majeure. If this concept is not circumscribed to a well defined and delimited situation, we could be leaving the door open to such deterioration. For this reason, it is necessary to delimit these causes of force majeure.

10. Member States shall ensure that there is:
(a) an increase of habitat area in good condition for habitat types listed in Annex I until at least 90 % is in good condition and until the favourable reference area for each habitat type in each biogeographic region of their territory is reached;
(b) an increasing trend towards the sufficient quality and quantity of the terrestrial, coastal and freshwater habitats of the species referred to in Annexes II, IV and V to Directive 92/43/EEC and of the species covered by Directive 2009/147/EC.

The Favourable Reference Area (FRA) of each habitat type in each Biogeographic Region, at EU scale, cannot be a mere sum of FRA patches at national scale, in each MS defined and calculated in their own way, but a coherent whole, for which an enormous effort of conceptualization and harmonization is still necessary within the framework of the 'Natura 2000 Biogeographic Process'.

As regards to (b), it may again be redundant and confusing in relation to other paragraphs (in particular, paragraph 6). The concepts of "continuous improvement of the quality (..) until the sufficient quality is reached" (paragraph 6) and "increasing trend towards sufficient quality" seem to refer to the same thing, but in different ways, which is confusing. It is also confusing that this paragraph does refer to "sufficient quality and quantity", while paragraph 6 only refers to quality. On the other hand, the MS must ensure not only the quality and quantity of the habitats of the species, but also that the natural processes that have given rise to the existing biodiversity can be maintained in them and allow for its future evolution.

Article 5.

1. Member States shall put in place the restoration measures that are necessary to improve to good condition areas of habitat types listed in Annex II which are not in good condition. Such measures shall be in place on at least 30 % of the area of each group of habitat types listed in Annex II that is not in good condition, as quantified in the national restoration plan referred to in Article 12, by 2030, on at least 60 % by 2040, and on at least 90 % by 2050.

The link between the definition of "Good Status" in the Regulation and that of "Good Environmental Status (GES)" in the Directive of Marine Strategy (DMS), as well as that of "favourable conservation status" in the Habitat Directive (HD), should be clearly established, since as it is written in the proposal (Article 3), the equivalence is not clear. It is essential to make a clear reference to these existing directives so as not to have different definitions for the same concept, since the HD and the DMS are the European standards that establish the obligation to assess the state of marine habitats every 6 years; and this assessment should be the basis on which to identify the habitats to be restored.

The current wording of Article 5.1 implies that, prior to establishing the need for restoration of marine habitats, it is necessary to have an assessment of their condition. It is obvious that this assessment must come from the results of the HD and DMS, which are also reported to the COM by the Member States, and not from another parallel assessment, but it must be clearly specified in the text.

The habitat types in Annex II of the proposal do not correspond to the habitat types that DMS establishes for the determination of GES through Commission Decision 2017/848 of 17 May 2017 establishing criteria and methodological standards for good environmental status of marine waters, as well as specifications and standardized methods for monitoring and assessment. The DMS performs the assessment of habitat status at Broad Type Habitat (EUNIS2) level, and the proposal of Regulation establishes a list of habitat types at EUNIS4 level, with a much higher level of detail. Therefore, within the framework of the DMS, an assessment of habitats is made at a more general level, taking into account when possible the presence and diversity of more specific habitats (EUNIS4, EUNIS3, etc.), but in most cases there is not enough information to draw conclusions on the state of habitats at that level of detail, not even to have a map of their distribution. Therefore, two issues are identified in relation to this topic:

The DMS assessment, which would cover Broad Habitat Types (EUNIS2), could not be used to answer the need for assessment of the status of habitat types in the Regulation (EUNIS4), as it would be done at a much broader level and less detail. Only in the case of some specific habitats, for which more information on their distribution and status is available, would it be possible to reach conclusions.

Even if an assessment were to be attempted at the level of detail intended by the draft, it would take many years to obtain the information necessary for adequate mapping and to reach conclusions on the conservation status of each of the EUNIS4 habitat types.

In addition, there is also no exact correspondence between the Habitat Types of Community Interest established by the HD and the habitat groups defined in the annex of the proposal, so that each subgroup described in Annex II has correspondence with several habita types.

It is not clear whether the percentages of area where restoration measures are to be taken (30% in 2030, 60% in 2040 and 90% in 2050) apply to the total area of each group of habitat types that are not in Good Status or to the area that is not in Good Status of each group of habitat types. The interpretation of this article is key, given that achieving restoration of the entire area with the presence of a habitat is not feasible.

In any case, these percentages should be reviewed and aligned with those being worked on in the DMS framework to define the GES of habitat types; in the COM working groups for the development of marine strategies, they have been discussing for years the threshold values (of quality and extent) to define whether a habitat reaches GES. This restoration regulation would be an optimal way to manage the results; the area to restore for each habitat type could be the area needed to reach GES according to that definition.

2. Member States shall put in place the restoration measures that are necessary to re-establish the habitat types listed in Annex II in areas not covered by those habitat types. Such measures shall be in place on areas representing at least 30 % of the additional overall surface needed to reach the total favourable reference area of each group of habitat types, as quantified in the national restoration plan referred to in Article 12, by 2030, at least 60 % of that surface by 2040, and 100 % of that surface by 2050.

In line with the above, the available data on favourable reference areas exist within the framework of the evaluations of Art. 17 for the habitats of Annex I of the Habitats Directive. This information does not currently exist for each of the habitats listed in Annex II of the Regulation, which makes its subsequent application difficult. It would therefore seem difficult to meet these objectives by these dates.

This section should specify that the restoration of habitats should be extended in any case to those areas where such habitat types should potentially be found, since as it is currently drafted, it could be interpreted as necessary to extend those habitats in any area, even in those where they would not be naturally present.

3. Member States shall put in place the restoration measures for the marine habitats of species listed in Annex III and in Annexes II, IV and V to Directive 92/43/EEC and for the marine habitats of wild birds covered under Directive 2009/147/EC, that are necessary in order to improve the quality and quantity of those habitats, including by re-establishing them, and to enhance connectivity, until sufficient quality and quantity of those habitats is achieved.

This section refers to the habitat types and habitats of the species of the nature Directives for which restoration measures are associated. Once again, it is unclear how the application of this section can be evaluated in view of the lack of correspondence between the habitats of the Habitats Directive and those listed in Annex II of the regulation.

4. The determination of the most suitable areas for restoration measures in accordance with paragraphs 1, 2 and 3 shall be based on the best available knowledge and the latest scientific evidence of the condition of the habitat types listed in Annex II, measured by the structure and functions which are necessary for their long-term maintenance, including their typical species, referred to in Article 1(e) of Directive 92/43/EEC, and of the quality and quantity of the habitats of the species referred to in paragraph 3. Areas where the habitat types listed in Annex II are in unknown condition shall be considered as not being in good condition.

The text of the regulation indicates that habitat types in 'unknown' condition should be considered, for the purposes of the objectives to be undertaken, as 'not in good condition', which in practice means that the 30% restoration objective has to be applied to the whole.

In the case of the marine environment, where a large part of the surface area and habitats cannot be assessed due to lack of data and knowledge (this is a relatively recent scientific discipline, which requires training of specialists and greater investment in equipment and human resources), the inclusion of this phrase would lead to expectations that would be impossible to meet.

For marine habitats with insufficient data, it could be proposed to apply the risk approach, calculating the risk of a habitat not reaching GES with the available data on the potential habitat typology in the area and the existing anthropogenic pressures.

5. The restoration measures referred to in paragraphs 1 and 2 shall consider the need for improved connectivity between the habitat types listed in Annex II and take into account the ecological requirements of the species referred to in paragraph 3 that occur in those habitat types.
No comments

6. Member States shall ensure that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show a continuous improvement in the condition of the habitat types listed in Annex II until good condition is reached, and a continuous improvement of the quality of the habitats of the species referred to in paragraph 3 until the sufficient quality of those habitats is reached. Member States shall ensure that areas in which good condition has been reached and in which the sufficient quality of the habitats of the species has been reached do not deteriorate.
Difficult to comply, except in in Special Areas of Conservation of the Natura 2000 Network where measures are applied

7. Member States shall ensure that areas where the habitat types listed in Annex II occur do not deteriorate.

No comments

8. Outside Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 and 7 is justified if caused by:

(a) force majeure;

(b) unavoidable habitat transformations which are directly caused by climate change; or

(c) a project of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis.

No comments

9. For Natura 2000 sites, the non-fulfilment of the obligation set out in paragraphs 6 and 7, is justified if caused by:

(a) force majeure;

(b) unavoidable habitat transformations which are directly caused by climate change: or

(c) a plan or project authorised in accordance with Article 6(4) of the Directive 92/43/EEC.

No comments

10. Member States shall ensure that there is:

(a) an increase of habitat area in good condition for habitat types listed in Annex II until at least 90 % is in good condition and until the favourable reference area for each habitat type in each biogeographic region of their territory is reached;

(b) a positive trend towards the sufficient quality and quantity of the marine habitats of the species listed in Annex III and in Annexes II, IV and V to Directive 92/43/EEC and of the species covered by Directive 2009/147/EC.

Very unlikely that (a) can be fulfilled.

Article 6 Restoration of urban ecosystems

1. Member States shall ensure that there is no net loss of urban green space, and of urban tree canopy cover by 2030, compared to 2021, in all cities and in towns and suburbs.

2. Member States shall ensure that there is an increase in the total national area of urban green space in cities and in towns and suburbs of at least 3 % of the total area of cities and of towns and suburbs in 2021, by 2040, and at least 5 % by 2050. In addition Member States shall ensure:
(a) a minimum of 10 % urban tree canopy cover in all cities and in towns and suburbs by 2050; and
(b) a net gain of urban green space that is integrated into existing and new buildings and infrastructure developments, including through renovations and renewals, in all cities and in towns and suburbs.

'Urban green space' is conceived [in the definition of Art. 3] in a very broad manner taking into account the calculations made by the Copernicus Earth Monitoring Service. This is an earth observation program based on the use of satellite images, supported by certain in situ data, which can be of undoubted value for the establishment of certain reference indicators of the global situation and of the evolution of land occupation and use in terms of sustainability, but which should not be taken directly to establish obligations that affect the determinations of land and urban planning instruments. The green areas included in the Copernicus system ignore key aspects such as whether they are publicly or privately owned, whether they are spaces open to public use or not, whether they are on land classified and urbanistically classified as green areas of an endowment nature or whether they are subject to urban transformation actions that have been approved in accordance with the legally established procedures.

This definition should not have binding effects on urban planning nor on urban legislation. Urban planning is an exclusive competence of the Member States and mandatory standards for green areas should not be established in an European Regulation (in terms of percentage increases measured in years) without taking into account the provisions of national or, in Spain, regional legislation. All this regardless of the fact that in Spain quality standards are guaranteed in relation to green areas and open spaces, even in urban rehabilitation and regeneration operations, which are very generous. In the latter, moreover, for state land legislation, what is relevant is not so much that new green areas are achieved as that the degraded area or neighbourhood is adequately regenerated (even if this requires that the pre-existing green areas are not increased). All this without prejudice to the necessary strategic environmental control and evaluation to which all urban development plans are subject.

Another observation is in the very consideration of 'urban green space' of a series of legal concepts, which in Spain would be indeterminate, such as natural meadows; moorlands and heathlands; transitional forests and areas of sparse vegetation. In Spanish urban planning language they are not 'urban green areas' and these 'urban green spaces', defined exclusively because they are within cities or towns and suburbs, could generate interferences with urban planning.
In this sense, it is proposed to lower the requirement to mere intentionality: from "shall ensure" (which is very demanding) to "shall pursue".

Article 7 Restoration of the natural connectivity of rivers and natural functions of the related floodplains

1. Member States shall make an inventory of barriers to longitudinal and lateral connectivity of surface waters and identify the barriers that need to be removed to contribute to the achievement of the restoration targets set out in Article 4 of this Regulation and of the objective of restoring at least 25 000 km of rivers into free-flowing rivers in the Union by 2030, without prejudice to Directive 2000/60/EC, in particular Articles 4(3), 4(5) and 4(7) thereof, and Regulation 1315/2013, in particular Article 15 thereof.

No comments

2. Member States shall remove the barriers to longitudinal and lateral connectivity of surface waters identified under paragraph 1 of this Article, in accordance with the plan for their removal referred to in Article 12(2), point (f). When removing barriers, Member States shall primarily address obsolete barriers, which are those that are no longer needed for renewable energy generation, inland navigation, water supply or other uses.

No comments

3. Member States shall complement the removal of the barriers referred to in paragraph 2 by the measures necessary to improve the natural functions of the related floodplains.

No comments

Article 8 Restoration of pollinator populations

1. Member States shall reverse the decline of pollinator populations by 2030 and achieve thereafter an increasing trend of pollinator populations, measured every three years after 2030, until satisfactory levels are achieved, as set out in accordance with Article 11(3)

As stated, "Pollinator populations" can be interpreted only in terms of abundance or number of individuals. We believe it should also be understood in terms of "diversity".

2. The Commission shall adopt implementing acts to establish a method for monitoring pollinator populations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2)..

No comments

3. The method referred to in the paragraph 2 shall provide a standardised approach for collecting annual data on the abundance and diversity of pollinator species and for assessing pollinator population trends.

Clarify the relationship between annual data collection in terms of abundance and diversity and the measurement of populations every three years referred to in Article 8.1.

Article 9 Restoration of agricultural ecosystems

1. Member States shall put in place the restoration measures necessary to enhance biodiversity in agricultural ecosystems, in addition to the areas that are subject to restoration measures under Article 4(1), (2) and (3).

No comments

2. Member States shall achieve an increasing trend at national level of each of the following indicators in agricultural ecosystems, as further specified in Annex IV, measured in the period from the date of entry into force of this Regulation until 31 December 2030, and every three years thereafter, until the satisfactory levels, identified in accordance with Article 11(3), are reached:

(a) grassland butterfly index;

(b) stock of organic carbon in cropland mineral soils;

(c) share of agricultural land with high-diversity landscape features

It might be necessary to develop a methodology (establishing, among others, the number of samples, their representative spatial distribution, sampling dates, etc.) to obtain data on the proposed indicators in order to establish the satisfactory level referred to in this article.

3. Member States shall put in place restoration measures to ensure that the common farmland bird index at national level based on the species specified in Annex V, indexed on … [OP please insert the date = the first day of the month following 12 months after the date of entry into force of this Regulation] = 100, reaches the following levels:

(a) 110 by 2030, 120 by 2040 and 130 by 2050, for Member States listed in Annex V with historically more depleted populations of farmland birds;

(b) 105 by 2030, 110 by 2040 and 115 by 2050, for Member States listed in Annex IV with historically less depleted populations of farmland birds.

No comments

4. For organic soils in agricultural use constituting drained peatlands, Member States shall put in place restoration measures. Those measures shall be in place on at least:

(a) 30 % of such areas by 2030, of which at least a quarter shall be rewetted;

(b) 50 % of such areas by 2040, of which at least half shall be rewetted;

(c) 70 % of such areas by 2050, of which at least half shall be rewetted..

What is the relationship between this section and the restoration objectives proposed in Article 4. Terrestrial Ecosystems? Will these % contribute to achieving the objectives of Article 4?

Article 10 Restoration of forest ecosystems

1. Member States shall put in place the restoration measures necessary to enhance biodiversity of forest ecosystems, in addition to the areas that are subject to restoration measures pursuant to Article 4(1), (2) and (3).

No comments

2. Member States shall achieve an increasing trend at national level of each of the following indicators in forest ecosystems, as further set out in Annex VI, measured in the period from the date of entry into force of this Regulation until 31 December 2030, and every three years thereafter, until the satisfactory levels identified in accordance with Article 11(3) are reached:

(a) standing deadwood;

(b) lying deadwood;

(c) share of forests with uneven-aged structure;

(d) forest connectivity;

(e) common forest bird index;

(f) stock of organic carbon.

In relation to the three-year frequency for monitoring, the temporal rhythm of the variations of the proposed indicators (a) dead wood in flight, (b) dead wood in soil, (c) proportion of stands with irregular structure, (d) forest connectivity, and (f) soil organic carbon, will not allow obtaining detectable variations in a monitoring every three years.

In Spain, moreover, monitoring of dead wood and soil organic carbon is carried out every 10 years.

It is also considered that the proposed indicators should not be presented as a national average, but should be established by forest type or formation in each country, since the parameters used are severely conditioned by the natural variables that correspond to each eco-geographical area. This consideration is also applicable to the determination of threshold and target values.
The question of establishing threshold and target values is fundamental. It is very appropriate that it should be entrusted to the MS and that a deadline of 2030 should be given (Art. 11.3), since this is a complex issue that will require the generation of scientific knowledge.

ITALY

Observations on Chapter II and V of the Regulation on nature restoration.

In addition to the comments sent on 12 September, we provide some comments on chapter V.

We need more time to develop in-depth considerations on Chapter V, we therefore put a scrutiny reserve on Chapter V.

We suggest to standardize the terminology used in Art. 19, with special reference to the verbs "adapt" and "update".

Why only in Art. 19 (3, 4 and 6) should the relative annexes be adapted in accordance with the latest scientific evidence? And: according with what should the annexes related to the remaining commas be adapted?

We also provide a clarification related to a question on Art. 10:
In relation to Art. 10, considering the lower impact on this sector, we highlight that is important not to contrast the activities of arboriculture plantations (**such as *Populus* plantations**), that are particularly important to reduce the pressure on forest areas and in Italy are composed by species and clones consistent with the environment where they develop.

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THE NETHERLANDS

IenW vragen bij voorstel verordening natuurherstel, H2, 5, 6.

H2: artt 4 t/m 10

Art.4: Algemene vraag: hoe verhoudt de toets aan de herstelmaatregelen zich tot de habitattoets van art. 6 lid 3 en 4?

Art.4 lid 4: 'Gebieden waar de toestand van de in bijlage I opgenomen habitattypen onbekend is, worden geacht niet in een goede toestand te verkeren' -> Gelet op het ontbreken van voldoende data kan dit veel en onwenselijke consequenties hebben. Bovendien werkt het bij de KRW is het net andersom. Daar valt het voor NL slecht uit, omdat wij meer meten en weten dan andere lidstaten, wat er toe leidt dat wij meer moeten doen en andere lidstaten minder. Gelet op die ervaring lijkt het beter een middenweg te zoeken.

Art. 4 lid 8 en 9:
De toets die plaats moet vinden buiten N2000 gebieden lijkt op de toets van art.6 lid 4 habitatrichtlijn. Wat is de verhouding tussen beide?
Monitoring vindt plaats is op het geheel; hoe vindt de toets aan artikel 4 lid 8 dan plaats? Is dit op project/plan niveau?

H5: artt 19 t/m 21
Wat is de verhouding tussen art.19 (wijziging bijlagen van deze verordening) met (wijziging van) de bijlagen van de Habitatrichtlijn?
@beleid: is het wenselijk om de bevoegdheid voor delegatie in te perken (zie bv art.19 lid 3: beperking tot aanpassing overeenkomstig de meest recente wetenschappelijke gegevens)?

H6: artt 22, 23.
Inwerkingtreding is erg snel; is dit haalbaar gelet op de uitvoeringsmaatregelen die moeten worden opgesteld?

Algemene vragen:

Brede consequenties van natuurherstelmaatregelen zijn in het voorstel onvoldoende in beeld gebracht. Hoe dient te worden om gegaan met economische gevolgen van de natuurherstelmaatregelen; moet de mogelijkheid van onteigening bijvoorbeeld in het herstelplan worden meegenomen? En hoe moet worden omgegaan met overgangstermijnen?

Er is onvoldoende aandacht voor overlap met andere EU regelgeving.

Volgens artikel 12 lid 4 stelt de CIE per gedelegeerde handeling een model voor het natuurherstelplan vast – in dit artikellid moet een uiterste termijn voor de CIE worden opgenomen, zodat het model er op tijd is.

Toegang tot de rechter is voldoende geregeld en hoeft niet in aparte EU wetgeving te worden herhaald, zie RIE.

Infoverplichtingen: zijn er heel (te) veel, bovendien moet eerst worden bekeken wat al beschikbaar is. Wie gaat het herstelplan maken en wat gaat het kosten?

Vragen die eerder door I&W – DGWB samen met HBJZ zijn opgesteld:

1. The favourable reference area and the 1950 reference

Firstly, the Netherlands would like to request for a clarification of the goal for the 'favourable reference area' as defined in article 3 sub 5 of the proposal with regard to the contents of the proposed nature restoration plan. Several references are made to documented losses in habitats over the past seventy years (i.e. since 1950). Combining the different articles in the proposal, our provisional interpretation is that:

1. The nature restoration plan should include mapped losses of the different habitat types since 1950 (article 1(5)(1)).
2. For each habitat type, the goal is to work towards the favourable reference for surface area, i.e. sufficient surface area for a national favourable conservation status. This does not mean restoring the exact situation as was present in the 1950s, but rather ensuring the long-term viability of habitat types (articles 4/5 (10)(a) and art. 3).
3. The nature restoration plan should therefore include which areas will be expanded (and/or improved in quality) in order to reach the favourable reference area. The restored areas can be different in size and/or location from the situation in 1950, as long as sufficient surface area (and quality) for a nationally favourable conservation status is reached. This interpretation would in the view of the Netherlands be more in accordance with the given definition in article 3 (5) of the proposal.

Request: can the Commission please express her view and confirm whether this interpretation is correct in writing?

We have based this reasoning on the following articles:

- Article 11 states that the nature restoration plan must indicate the area of habitat types to be restored (as required by Article 4(1) and (2) and Article 5(1) and (2)).
- Article 11(2)(a) states that this area must be based on:
  - *(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;*

- Article 3 of the proposal states that:

'favourable reference area' means the total area of a habitat type in a given biogeographical region or marine region at national level that is considered the minimum necessary to ensure the long-term viability of the habitat type and its species, and all its significant ecological variations in its natural range, and which is composed of the area of the habitat type and, if that area is not sufficient, the area necessary for the re-establishment of the habitat type;"

- Articles 4 and 5, paragraph 10(a), then state:

"Member States shall ensure that there is: (a) an increase of habitat area in good condition for habitat types listed in Annex I until at least 90 % is in good condition and until the favourable reference area for each habitat type in each biogeographic region of their territory is reached;"

- Paragraph 1.5.1 of the proposal states under d) *"Member States shall start as soon as possible after the entry into force of the Regulation assessing the ecosystems in terms of areas of the ecosystem in good condition, in degraded condition, that were lost over the last 70 years and areas that would be most suitable for re-establishment of the ecosystem."*

To illustrate this, we give a hypothetical example:
500 ha of habitat type X have been lost since 1950, mainly in the southern part of the North Sea.

We currently do not have enough surface area for the habitat type in that part to function optimally, but with an additional 100 hectares, sustainable conservation is assured. And the best place to restore the habitat type would be located in the northern part of the North Sea. In this case, one can confidently include in the nature restoration plan that one is going to restore 100 ha in the northern North Sea and while doing so will comply with article 5 (for this habitat type).

2. Relation with Maritime Spatial Planning (MSP) Directive (2014/89/EU)

In the Netherlands, the North Sea Program contains the North Sea policy, including both measures for marine nature restoration and the maritime spatial plan. With the North Sea Program, the requirements from the Maritime Spatial Planning (MSP) Directive (2014/89/EU) are met. The North Sea Programme also includes the program of measures as required by the Marine Strategy Framework Directive (MSFD, 2008/56/EC). As such, the North Sea programme is the integral spatial plan for the Dutch part of the North Sea, in which MSP is used as a tool to balance all marine uses and interests.

We note that, in the proposal for a Regulation on Nature Restoration, no reference is made to the MSP Directive, nor to the maritime spatial plan.

Request: can the Commission please explain in writing why there is no such reference mentioned, and how the proposed Regulation on nature restoration relates to the MSP directive?

a. **Renewable energy at sea**

The Netherlands, as well as other North Sea countries, has extensive plans for developing renewable energy (wind farms) at sea. Various references to renewable energy are made in the proposal:

- The considerations (60) and (61) refer to the REPowerEU initiative and the designation of 'go-to' areas for renewable energy.
- Furthermore, article 11(6) states that:

"Member States shall coordinate the development of national restoration plans with the designation of the renewables go-to areas. During the preparation of the nature restoration plans, Member States shall ensure synergies with the already designated renewables go-to areas and ensure that the functioning of the renewables go-to areas, including the permitting procedures applicable in the renewables go-to areas foreseen by Directive (EU) 2018/2001 remain unchanged."

These provisions mainly concern possible synergies between renewable energy and nature goals. However, offshore wind farm/renewable energy development also has potential negative ecological consequences. As a result, a conflict may possibly arise between the proposed nature restoration goals and the goals for renewable energy development at sea.

Request: how does the proposed regulation in the view of the Commission take a potential conflict between nature and renewable energy into account? How does the development of renewable energy relate to the exception for 'overriding public interest' in article 5(8)(c)?

Comments from DHLGH Ireland on Chaps II, V and VI of Proposal for a Regulation of the European Parliament and of the Council on nature restoration

For submission by 30 September 2022

Chapter II - Restoration targets and obligations

General comments:

1. A considerable amount of data collection, collation and analysis in addition to engagement and consultation with multiple players will need to be undertaken within a very challenging timescale to quantify the targets and measures set out in this Chapter and prior to the preparation of the NRP (Chap III).
2. The habitat groups in Annex I do not represent a systems approach (e.g. dune types are listed in different groups, as are wet heaths and blanket bogs), which could make application of restoration measures by area very complicated.
3. A definition of forest ecosystems (Article 10) is requested. Due to the composition of Irish forests, where the degree of naturalness is lower relative to other MS, achieving the targets in this Article, if applied to the entire national forest estate, would be extremely challenging.
4. Streamlining of monitoring programmes, where possible, is recommended to enable efficient reporting.
5. Further information is required on all monitoring methodologies as soon as possible to facilitate the development of appropriate programmes.

Article 4 - Restoration of terrestrial, coastal and freshwater ecosystems

The objective of **Article 4** is restoring ecosystems but it focuses on delivery of restoration measures on the basis of habitats. Measures for assessment at ecosystem level appear to be lacking.

Article 4(6) Member States shall ensure that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show a continuous improvement in the condition of the habitat types listed in Annex I until good condition is reached, and a continuous improvement of the quality of the habitats of the species referred to in paragraph 3, until the sufficient quality of those habitats is reached. Member States shall ensure that areas in which good condition has been reached, and in which the sufficient quality of the habitats of the species has been reached, do not deteriorate.

Article 4(7) is unclear insofar as areas where the habitat types listed in Annex I occur can include urban areas, which are otherwise excluded from Article 4. It introduces a new regime of land management for habitats of Union importance which occur externally to the Natura 2000 network and will affect land use planning and assessment of projects and plans.
The Commission responded:
"The regime applicable to Natura 2000 sites remains unchanged. Outside Natura 2000, there is a duty to ensure non deterioration of habitat types listed in Annex I and II (Art 4(7) and 5(7)) with certain exceptions set out in 4(8) and 5(8). These exceptions are less strict than the ones in Art.6.4 of the Habitats Directive. Furthermore, there is a duty to take restoration measures (art 4(1)-(3) and 5(1)-(3)) and to ensure their effectiveness (4(6) and 5(6)) in terms of improvement of condition/quality of habitats of the species. In the territory of the MS (inside/outside Natura 2000) there is a duty to increase the overall surface in good condition as well as the area covered by habitat types until FRA is reached and to increase quality and quantity of habitats of species (art 4(10) and 5(10))."

However, the publication of a National Restoration Plan - which sets out specific geographical areas where such habitat types are to be restored with timeframes in accordance with the proposed Regulations - will necessitate environmental assessment for areas outside of Natura 2000 sites. Although these new restoration areas will not be subject to assessment to the standard required under Article 6(4) of the Habitats Directive, they will in effect create a necessity for revisions to land use and sectoral plans to take into account the legal requirement for non-deterioration. This will in turn potentially affect scoping for EIA Directive for projects. The new regime will also potentially affect the screening for appropriate assessment both for the restoration measures to be taken and also for other projects which occur within the new restoration areas in order to consider how range and areas of natural habitats are faring. It is also envisaged that land use plans may have to be revised with respect to zoning of the economic activities that are permissible within the specific habitat types listed in Annex I. Timeframes for this to be prepared, including for public consultation on variations to existing land use plans, should be considered in relation to the preparation of the National Restoration Plan and its revisions following the Commission's responses.

It should be noted that land use planning is a national competence, albeit one which must comply with relevant binding EU provisions. The consequential implications for land use planning require further clarification before MS can properly assess this for comment.

Article 5 - Restoration of marine ecosystems:

Article 5 sets out the MS obligations and exceptions for restoration of marine Ecosystems. For Ireland as a small island nation with a large Exclusive Economic Zone, ~92% of the national maritime jurisdiction fall outside the 12nm territorial waters. Regulation of some activities outside territorial waters in not a member state competence. Shipping and military activities are regulated under UNCLOS while the Treaty of the Functioning of the European Union gives sole competency for the conservation of marine biological resources under the CFP, to the Union. The draft regulation as it stands does not account for this issue.

Drafting suggestion:

1. Member States shall put in place the restoration measures that are necessary to improve to good condition areas of habitat types listed in Annex II which are not in good condition. Such measures shall be in place on at least 30 % of the area of each group of habitat types listed in Annex II that is not in good condition, as quantified in the national restoration plan referred to in Article 12, by 2030, on at least 60 % by 2040, and on at least 90 % by 2050.

2. Member States shall put in place the restoration measures that are necessary to re-establish the habitat types listed in Annex II in areas not covered by those habitat types. Such measures shall be in place on areas representing at least 30 % of the additional overall surface needed to reach the total favourable reference area of each group of habitat types, as quantified in the national restoration plan referred to in Article 12, by 2030, at least 60 % of that surface by 2040, and 100 % of that surface by 2050.

3. Member States shall put in place the restoration measures for the marine habitats of species listed in Annex III and in Annexes II, IV and V to Directive 92/43/EEC and for the marine habitats of wild birds covered under Directive 2009/147/EC, that are necessary in order to improve the quality and quantity of those habitats, including by re-establishing them, and to enhance connectivity, until sufficient quality and quantity of those habitats is achieved.

4. The determination of the most suitable areas for restoration measures in accordance with paragraphs 1, 2 and 3 shall be based on the best available science and on the latest assessment, where available, of the condition of the habitat types listed in Annex II, measured by the structure and functions which are necessary for their long-term maintenance, including their typical species, referred to in Article 1(e) of Directive 92/43/EEC, and of the quality and quantity of the habitats of the species referred to in paragraph 3. Areas where the habitat types listed in Annex II are in unknown condition shall be considered as not being in good condition.

5. The restoration measures referred to in paragraphs 1 and 2 shall consider the need for improved connectivity between the habitat types listed in Annex II and take into account the ecological requirements of the species referred to in paragraph 3 that occur in those habitat types.

6. Member States shall ensure that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show a continuous improvement in the condition of the habitat types listed in Annex II until good condition is reached, and a continuous improvement of the quality of the habitats of the species referred to in paragraph 3 until the sufficient quality of those habitats is reached. Member States shall ensure that areas in which good condition has been reached and in which the sufficient quality of the habitats of the species has been reached do not deteriorate.

7. Member States shall ensure that areas where the habitat types listed in Annex II occur do not deteriorate.

8. A Member State may identify instances in sites within its marine waters but outside Natura 2000 where, for any of the reasons listed under points (a) to (g), the restoration targets cannot be achieved in every aspect through measures taken by that Member State, or, for reasons referred to under point (f), they cannot be achieved within the time schedule concerned:

(a) force majeure;

(b) unavoidable habitat transformations which are directly caused by climate change; or

(c) a project of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis.

(d) action or inaction for which the Member State concerned is not responsible

(e) natural causes

(f) natural conditions which do not allow timely improvement in the status of the marine waters concerned.

(g) consequences of activities for which regulation is not a Member state competence

The Member State concerned shall identify such instances clearly in its national restoration plan and shall substantiate its view to the Commission. In identifying instances a Member State shall consider the consequences for Member States in the marine region or subregion concerned. However, the Member State concerned shall take appropriate ad-hoc measures aiming to continue pursuing the environmental targets, to prevent further deterioration in the status of the marine habitats and species affected for reasons identified under points (a), (c) or (e) and to mitigate the adverse impact at the level of the marine region or subregion concerned or in the marine waters of other Member States.

9. For Natura 2000 sites, the non-fulfilment of the obligation set out in paragraphs 6 and 7, is justified if caused by:

(a) force majeure;

(b) unavoidable habitat transformations which are directly caused by climate change: or

(c) a plan or project authorised in accordance with Article 6(4) of the Directive 92/43/EEC.

(d) action or inaction for which the Member State concerned is not responsible

(e) natural causes

(f) natural conditions which do not allow timely improvement in the status of the marine waters concerned.

(g) consequences of Activities for which regulation is not a Member state competence

10. Member States shall ensure that there is:

(a) an increase of habitat area in good condition for habitat types listed in Annex II until at least 90 % is in good condition and until the favourable reference area for each habitat type in each biogeographic region of their territory is reached;

(b) a positive trend towards the sufficient quality and quantity of the marine habitats of the species listed in Annex III and in Annexes II, IV and V to Directive 92/43/EEC and of the species covered by Directive 2009/147/EC

11. Where a Member State identifies an issue which has an impact on the restoration of its marine species and habitats and which cannot be tackled by measures adopted at national level, or which is linked to another Community policy or international agreement, it shall inform the Commission accordingly and provide a justification to substantiate its view.

The Commission shall respond within a period of six months.

12. Where action by Community institutions is needed, Member States shall make appropriate recommendations to the Commission and the Council for measures regarding the issues referred to in paragraph 11. Unless otherwise specified in relevant Community legislation, the Commission shall respond to any such recommendation within a period of six months and, as appropriate, reflect the recommendations when presenting related proposals to the European Parliament and to the Council.

Article 6 - Restoration of urban ecosystems

In contrast to the other Articles in Chapter II, **Article 6** uses land cover and land use units, rather than habitats, to describe urban ecosystems. This creates a false impression that there is no intersection between habitats listed in Annexes I and II and urban ecosystems. It would be more logical to apply the same requirements to urban ecosystems with respect to a targeted approach to habitats of conservation importance.

Article 6(1)*: Member States shall ensure that there is no net loss of urban green space, and of urban tree canopy cover by 2030, compared to 2021, in all cities and in towns and suburbs.* Ireland has had a policy of halting loss of biodiversity under its successive National Biodiversity Action Plan (NBAP) since 2011 and with a specific action in 2017 that all Public Authorities and private sector bodies move towards no net loss of biodiversity through strategies, planning, mitigation measures, appropriate offsetting and/or investment in Blue-Green infrastructure. It is questionable to apply no net loss concept solely to urban ecosystems in the proposed Regulations.

Recital (13) defines 'urban green space' (UGS) for Article 6(1) as *"all green urban areas; broad-leaved forests; coniferous forests; mixed forests; natural grasslands; moors and heathlands; transitional woodland-shrubs and sparsely vegetated areas - as found within cities or towns and suburbs calculated on the basis of data provided by the Copernicus Land Monitoring Service as established by Regulation (EU) 2021/696 of the European Parliament and of the Council"*.

Definitions of UGS vary in the scientific literature. This definition is selective in what it includes as UGS within urban ecosystems, is heavily biased towards certain types of vegetation and land cover – notably forestry - and does not accord with the predominantly coastal ecosystems of Irish cities and towns due to historic settlement and urbanisation in Ireland for the past millennium.

There is no reference to wetlands, a major land use/land cover (LCLU) category within Irish urban ecosystems. Account will also need to be taken of the implications of climate change for coastal regions over the coming decades and the impact of this with certain urban landscapes and habitats.

This gap in blue infrastructure requires consideration if the restoration of urban ecosystems is to be achieved. Semi-natural grasslands should be included. The definitions of the terms in Recital 13 are not given, but, given the anomalies in categorisation of 'green urban areas' in the Copernicus Mapping Guide for the Urban Atlas[1], this requires further discussion. We note the exclusion of "sports and leisure facilities" and that this category, which includes golf courses, can be a major contribution to biodiversity of urban ecosystems due to the presence of 'links' courses in Ireland adjoining and interconnected with Natura 2000 sites. Furthermore, our experience is that the categorisation of designed landscapes as "artificial surfaces" distorts the quantification of UGS for Dublin City.

Recital 13 states that UGS will be calculated based on the Copernicus Land Monitoring Service and Section 1.5 of the Legislation and Financial Statement notes that monitoring of UGS will be through Copernicus. There is no reference as to what Copernicus dataset shall be used or the resolution for the source data. Noting the Commission's response that the Corine Land Cover dataset will be the reference[2], clarification is needed as to what nomenclature and if Level 3 is being used[3]. We suggest that the Urban Atlas is also useful. We note the Commission's response[4] that other datasets or local data could be used if reliable and verifiable. Ireland's EPA has funded research studies to map both UGS and urban tree canopy cover with reference to the Copernicus Urban Atlas 2016 but refined with additional methods and ground-truthing. It was found that, for Ireland, green infrastructure was more fully defined and specified within the Urban Atlas land cover data, but blue infrastructure was better defined and specified within the CORINE land cover data[5].

Article 6(2): *Member States shall ensure that there is an increase in the total national area of urban green space in cities and in towns and suburbs of at least 3 % of the total area of cities and of towns and suburbs in 2021, by 2040, and at least 5 % by 2050. In addition, Member States shall ensure:*
(a) a minimum of 10 % urban tree canopy cover in all cities and in towns and suburbs by 2050; and
(b) a net gain of urban green space that is integrated into existing and new buildings and infrastructure developments, including through renovations and renewals, in all cities and in towns and suburbs.

[1] https://land.copernicus.eu/user-corner/technical-library/urban_atlas_2012_2018_mapping_guide
[2] Commission Presentation at the Working Party on the Environment (Nature Restoration Law) 8th September 2022.
[3] clc-product-user-manual (copernicus.eu)
[4] Report from the Working Party on the Environment (Nature Restoration Law) 8th September 2022.
[5] https://www.epa.ie/publications/research/environment--health/Research_Report_264.pdf

Urban tree canopy cover has been mapped in great detail for several Irish cities through a joint research project by the EPA, local authorities and universities and with community inputs. A challenge for retention of urban trees in Ireland is the exemption from any consent requirements for felling of trees in urban areas under the Forestry Act 2014. Controls are mainly limited to sites for which planning consents are actively being sought as part of overall urban development. Thus, significant domestic legislative amendment and public consultation would be required to achieve the target set out in **Article 2(a)**.

Given the anomalies in the definition of UGS (above), it is clear that the provision of a percentage of UGS of certain types of LCLU will have highly variable – and even dubious – results in contribution to restoration of biodiversity of urban ecosystems. Based on Irish research examples[6], the provision of intensively managed UGS with low vegetation cover will still meet this target under **Article 2** yet have no net biodiversity gain. It would be more meaningful to allow MS to determine target LCLU types and measures to restore these within urban ecosystems than to set blanket percentages which are biased toward certain LCLU types. Furthermore, increasing the quantum of UGS is of limited value without ensuring clarity in the role of professionals in the built environment to manage it for urban biodiversity[7].

The Commission has replied that **Art 6.2(a)** applies to each and every LAU[8]. The method of averaging this on a national basis could result in wide disparities at the regional level. The imposition of binding targets which do not reflect the particular circumstances faced by individual MS will result in distortions and will make it more difficult for some MS to meet the targets.

Although these Regulations are to further implement the Habitats Directive, we note that there is no provision for the increase in UGS for the purpose of increased connectivity to the Natura 2000 network or for habitat types listed in Annex I that occur within urban ecosystems. This approach should be prioritised over percentages of total area of urban settlements, particularly where protected areas are recorded as deteriorating in status due to urban pressures. This also supports the definition of restoration as per **Article 3(3)** and the purpose of **Article 4(5)**.

[6] https://www.epa.ie/publications/research/epa-research-2030-reports/research-399-mapping-green-dublin-strategic-pathways-to-community-led-greening.php

[7] Harris, M., Hochstrasser, T. and Foley, K., 2016. Urban biodiversity management in Ireland: capturing the experience of practitioners. In *Urban Landscape Ecology* (pp. 311-329). Routledge.

[8] Report from the Working Party on the Environment (Nature Restoration Law) 8th September 2022.

It is unclear as to how the proposed regulation will interact or impact on domestic land use consenting. The proposed wording is also unclear as to how it will relate to any actions taken outside of MS consenting regimes (i.e. the development of UGS or tree planting without the need for consent), where the MS has limited influence on land management or restoration. Where a private landowner seeks planning consent for development, it is possible to require (where there is a policy objective in place) adherence to specific criteria however this is not possible outside of an application for consent. It will be very difficult to monitor and enforce adherence to a national target when the delivery of that target depends on regional and local level actions, many of which are not within the remit of the government authorities. Government agencies and others, including the private sector, can pro-actively increase UGS and urban tree canopy (including without and separately to formal consenting) but it is not clear how will this be assessed against any losses. Furthermore, it is unclear if the requirement relates to the actual situation on the ground in 2030, or if developments in progress in 2030 can be accounted for.

The Commission has replied that **Article 2(b)** is to be applied at the project level[9]. There should be clarity in what is meant by this requirement. If it is intended to be biodiversity net gain at project level, this does not necessarily require a net increase in the area of UGS. Given the discrepancies in definitions of Copernicus for 'artificial surfaces' and typical UGS categories, the scope for net increase of UGS will be narrow, as it stands. The Commission's reply that private gardens are to be included is also confusing when compared with categorisation using the Copernicus Urban Atlas.

The Commission has stated "*our analysis showed that across MS there are significant areas of abandoned industrial and agricultural land that could be used for increasing green area and tree canopy cover, or for new greener urban development"*. Ireland is not one of these MS. It does not have a history of industrialisation and abandonment of such agricultural, industrial or military lands. In fact the use of brownfield sites for urban development, given the rapidly growing Irish population is a key aspect of our overall climate action strategy and National Planning Framework, to protect against the creation of further urban sprawl based on greenfield lands with potentially more significant biodiversity impacts and urban brownfield site development. See more detailed comments on Recital 44.

[9] Report from the Working Party on the Environment (Nature Restoration Law) 8th September 2022

Therefore, opportunities for new UGS to be found here are more limited. It would be more appropriate to consider the purpose of the Regulations – restoration – and the means to address degradation within urban ecosystems generally across MS, such as conversion of former landfill sites from amenity grasslands to more diverse habitats.

Recital 44 states "*Actions to ensure that urban green spaces will no longer be at risk of being degraded need to be strongly enhanced. In order to ensure that urban green spaces continue to provide the necessary ecosystem services, their loss should be stopped and they should be restored and increased, inter alia by better integrating green infrastructure and nature-based solutions into urban planning and by integrating green infrastructure, such as green roofs and green walls, in the design of buildings".*

This text implies that provision of green roofs and green walls can be quantified as part of provision of increased UGS through restoration of urban ecosystems. However, the above definition of UGS excludes nature-based solutions or green roofs/walls etc and so it is unclear how this is to be managed though consenting regimes (where they are applicable). The detail on the proposed measures to implement this are lacking and should be elaborated. Implementation of net gain for buildings will be challenging to assess cumulatively when it is dependent on individual developments, including many which do not require consent (i.e. renovation/renewal). A focus on the management and maintenance of existing UGS to include improvements / restoration is appropriate, in addition to planning for new UGS. The majority of green roof installations in Dublin are sedum mats which generally are of low value for restoring biodiversity, although they may provide benefits for climate adaptation. This is currently the subject of ongoing research[10].
We suggest consideration of Copernicus Category 1.4. "Artificial non-agricultural vegetated areas for inclusion" in this as a separate, discrete target for provision of nature-based solutions under Article **6 (2)**. This would also serve goals for integration with climate action e.g. addressing urban heat island effects.

[10] Results - Newsletter February » Operandum (operandum-project.eu)

The proposal does not account for the fact that the conditions affecting urban areas are not consistent across the EU. Ireland has experienced relatively rapid urban development in recent decades and is facing further increases in population, resulting in pressure to increase urbanisation further. Having regard to the experience of the recent past and the negative consequences of urban sprawl, the National Planning Framework (2018) seeks to influence the spatial development of the country by increasing densities in settlements through 'compact growth' objectives and thereby reducing the need to travel outside settlements, in the interest of providing a more sustainable development pattern in future. This approach, in addition to having obvious climate benefits, also seeks to reduce the pressure on Natura 2000 sites and other protected areas. It would appear, however, that Article 6 as proposed may limit Ireland's ability to effectively balance the competing demands on land use within settlements. Arresting the loss of UGS is likely to conflict with other high-level strategic objectives related to compact growth, particularly in relation to the development of infill and brownfield sites in towns and cities. Existing public UGS protection is already addressed through policy and zoning objectives of local development plans related to 'Open Space' and any other environmental designations that apply. The National Planning Framework and related national, regional and local policies and strategies, including those seeking to meet climate and biodiversity objectives, already recognise the need to provide for nature restoration and it would appear that, as set out elsewhere in this submission, more meaningful methods of responding to the biodiversity crisis would allow for a greater degree of balance between these objectives.
Similarly, **Recital (58)** states that "The restoration measures required to achieve one specific target will in many cases contribute to the achievement of other targets or obligations". Is it also possible however that achieving one target may impact negatively on other targets.

Recital (58) further states that "MS should take account of the specific conditions and needs in their territory, in order for the plans to respond to the relevant pressures, threats and drivers of biodiversity loss, and should cooperate to ensure restoration and connectivity across borders". This is appropriate in terms of the principle of subsidiarity. However, the targets set out within the proposed Regulations apply equally across the EU and do not account for where differences may occur in terms of, for example, domestic land use planning legislation and consenting regimes and the social, environmental and economic make up of society in different MS, including, within Ireland, a distinct relationship with our Constitution. This has implications for the ability of the MS to meet the targets set out. The applicability of this in relation to the island of Ireland in a post-Brexit era requires further consideration.

Provisions should be included in Article 6 for urban ecosystems similar to those for terrestrial, coastal and freshwater ecosystems under Article 4(6) to ensure consistency of land use management and so that the quantum of UGS and urban tree canopy cover should be retained once targets have been met. This is necessary to provide stability for setting of planning conditions and also to ensure adequate maintenance plans for UGS.

Article 7 – Restoration of the natural connectivity of rivers and natural functions of the related floodplains

There needs to be clear guidance as to how environmental assessment at project level will be carried out in relation to achievement of 'good condition' for certain habitats under the proposed Regulations and 'good ecological status' under the WFD for waterbodies and their associated habitats. This is particularly important in terms of delivery of **Article 6(2)(b)** for projects and for mitigation and monitoring programmes under the EIA Directive.

In terms of removal of obsolete barriers, there should be consideration of those which are features of cultural heritage value.

Article 8 – Restoration of pollinator populations

If it is envisaged that an Annex list of pollinator species or habitats or additional legal protections will be introduced, then it should be with reference to the European Court of Auditors report regarding deficiencies in the Habitats Directive in protection of wild pollinator species, particularly regarding critically endangered and endangered bee species, and the need for monitoring and financing options available for their protection"[11].

Article 9 – Restoration of agricultural ecosystems

Article 9(1) will also necessitate reviews in Ireland of the measures under the existing National Planning Framework, the National Marine Planning Framework and National Climate Action Plan.

[11] EU Court of Auditors (2020) Special Report Protection of wild pollinators in the EU — Commission initiatives have not borne fruit. pp. 18-19. Special Report 15/2020: Protection of wild pollinators in the EU — Commission initiatives have not borne fruit (europa.eu)

As the determination of **Article 9(2)(c)** "share of agricultural land with high-diversity landscape features" will require spatial mapping and delineation of monitoring areas, this is likely to affect existing planning frameworks and necessitate revisions to spatial plans at national, regional and local levels which are also subject to environmental assessment under the Strategic Environmental Assessment and Habitat Directives. Consideration should be given to transitional arrangements. Further information is requested on the relationship with national landscape strategies under the European Landscape Convention and landscape character assessments.

In accordance with **Annex IV**, ecosystem services assessment will be necessary to demonstrate the rationale for selection of such landscape features. This may entail further planning and public consultation processes.

The proposed methodology using Eurostat's Land Use/Cover Area frame Survey (LUCAS)[12] will need to be coordinated with other land use planning for each MS. For example, Ireland is mapping national land cover through its Ordnance Survey.

Article 10 – Restoration of forest ecosystems

Under **Article 10 (2)**, indicators (c) and (d) are unclear with respect to urban areas and also to spatial connectivity to existing protected areas under Article 10 of the Habitats Directive.

Article 11 - Preparation of the national restoration plans

Several articles of the new regulation require inputs of data, which may not currently exist, particularly in large marine ecosystems. Article 11 requires preparatory monitoring and research to identify restoration measures to meet targets. Reference biodiversity levels from 1950 are required to contribute to the preparation of national restoration plans. For Ireland's marine environment this may not be possible. The expanded scope of the habitats and species under Annex II also required new information including new submarine habitat mapping at an extensive spatial scale. The two-year timescale envisaged for the restoration plans is unrealistic for the collection of retrospective data, where available, and the creation of reliable maps for the new habitats-furthermore historic baseline data for the new habitats are unavailable. The draft regulation as it stands does not account for this issue.

[12] Scarnò, Marco & Ballin, Marco & Barcaroli, Giulio & Masselli, Mauro. (2018). Redesign sample for Land Use/Cover Area frame Survey (LUCAS) 2018. 10.2785/132365.

The marine environment is transboundary and species and habitats extend beyond national jurisdiction including into other Member States, third countries and areas beyond national jurisdiction. The synergies provision of Article 11 does not adequately provide for coherence and consistency of national restoration plans in a marine region or subregion. This requirement is added to the drafting proposals hereunder.

Drafting suggestion:

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.

2. Member states shall quantify the area that needs to be restored to reach the restoration targets set out in Articles 4 and 5 taking into account the condition of the habitat types referred to in Articles 4(1), 4(2), 5(1) and 5(2) and the quality and quantity of the habitats of the species referred to in Article 4(3) and Article 5(3) that are present on their territory. 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;

the sufficient quality and quantity of the habitats of the species required for achieving their favourable conservation status, taking into account the areas most suitable for re-establishment of those habitats, and the connectivity needed between habitats in order for the species populations to thrive, as well as ongoing and projected changes to environmental conditions due to climate change.

3. Member States shall set, by 2030 at the latest, satisfactory levels for each of the indicators referred to in Articles 8(1), 9(2) and 10(2), through an open and effective process and assessment, based on the latest scientific evidence and, if available, the framework referred to in Article 17(9).

4. Member States shall identify and map the agricultural and forest areas in need of restoration, in particular the areas that, due to intensification or other management factors, are in need of enhanced connectivity and landscape diversity.

5. Member States shall identify synergies with climate change mitigation, climate change adaptation and disaster prevention and prioritise restoration measures accordingly. Member States shall also take into account:

(a) their integrated national energy and climate plan referred to in Article 3 of Regulation (EU) 2018/1999;

(b) their long-term strategy referred to in Article 15 of Regulation (EU) 2018/1999;

(c) the Union binding target for 2030 set out in Article 3 of Directive 2018/2001/EU of the European Parliament and of the Council. 6. Member States shall coordinate the development of national restoration plans with the designation of the renewables go-to areas. During the preparation of the nature restoration plans, Member States shall ensure synergies with the already designated renewables go-to areas and ensure that the functioning of the renewables go-to areas, including the permitting procedures applicable in the renewables go-to areas foreseen by Directive (EU) 2018/2001 remain unchanged.

7. When preparing their national restoration plans, Member States shall take the following into account:

(a) the conservation measures established for Natura 2000 sites in accordance with Directive 92/43/EEC;

(b) prioritised action frameworks prepared in accordance with Directive 92/43/EEC;

(c) measures for achieving good ecological and chemical status of water bodies included in river basin management plans prepared in accordance with Directive 2000/60/EC;

(d) marine strategies for achieving good environmental status for all Union marine regions prepared in accordance with Directive 2008/56/EC;

(e) national air pollution control programmes prepared under Directive (EU) 2016/2284;

(f) national biodiversity strategies and action plans developed in accordance with Article 6 of the Convention on Biological Diversity;

(g) conservation measures adopted under the common fisheries policy.

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8. Member States shall, when preparing the national restoration plans, make use of the different examples of restoration measures listed in Annex VII, depending on specific national and local conditions, and the latest scientific evidence.

9. Member States shall, when preparing the national restoration plans, aim at optimising the ecological, economic and social functions of ecosystems as well as their contribution to the sustainable development of the relevant regions and communities.

10. Member States shall, where possible, foster synergies with the national restoration plans of other Member States, in particular for ecosystems that span across borders.

10 (bis) Member States sharing a marine region or subregion shall cooperate to ensure that, within each marine region or subregion, the national restoration plans required to achieve the objectives of this regulation, are coherent and coordinated across the marine region or subregion concerned.

11. In order to achieve the coordination referred to in Article 11(10), Member States shall, where practical and appropriate, use existing regional institutional cooperation structures, including those under Regional Sea Conventions, covering that marine region or subregion.

12. For the purpose of establishing and implementing national restoration plans, Member States shall, within each marine region or subregion, make every effort, using relevant international forums, including mechanisms and structures of Regional Sea Conventions, to coordinate their actions with third countries having sovereignty or jurisdiction over waters in the same marine region or subregion.

13. 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. Consultations shall comply with the requirements set out in Articles 4 to 10 of Directive 2001/42/EC.

Chapter V

Delegated Procedures

The introduction of Chapter V A(rt. 19-21) on delegated powers at such a late stage is resisted. MS cannot be expected to develop positions at such short notice and proper preparation and scheduling is required. The provisions in Article 19 and the checks and balances in Articles 20 and 21 have wide ranging consequences for the functioning of the final regulation will need sufficient consideration.

Annex VII

This relates to Article 11(8) but there are linkages to Articles 4-11. The entire Annex needs further revision as it introduces concepts, terms of reference and objectives not found within the Articles of the Regulations. This creates confusion about requirements of the Regulations. It reads like a 'wish list' which is not scientific or precise enough for a legal instrument. There is also a need to prioritise and link some of these examples in a process-oriented approach. It would be better to prepare a technical guidance document which gives greater thought to this content. Otherwise, it may be that MS carry out measures which appear to be in line with these examples of measure but do not provide for restoration or fulfil the objectives of the Regulations.

Measure (15) can also be applied to urban ecosystems.

The terminology of Measure (29) mixes ecological features with land uses and is non-scientific: "Increase urban green spaces with ecological features, such as parks, trees and woodland patches with native species, green roofs, wildflower grasslands, gardens, city horticulture, tree-lined streets, urban meadows and hedges, ponds and watercourses." This combines varying objectives for provision of UGS that is cultivated land, requirements for native species, and measures for nature-based solutions that are excluded from categorisation under the Copernicus datasets stated as baseline for Article 6. Greater clarity of thought and scientific objectives are needed to achieve restoration of urban ecosystems which is meaningful for addressing the biodiversity crisis. This also ties blue infrastructure into the objectives of the Regulations and urban wetlands, despite the Commission's response on this topic. The range of UGS features includes some areas which are outside of MS powers to regulate, e.g. gardens.

The statement in Measure (31) to convert industrial areas to natural ones is not recognising the impacts of past land use on biodiversity. It would be better to take an adaptive management approach to manage for the best biodiversity out comes possible than to try to 'reset' these sites to some unknown original state. Quarries in particular can develop their own unique biodiversity with many rare insects and plants that may have moved in. Brownfield sites in ports can have unique flora that is a product of their cultural and botanical histories. In addition, consideration should be given to measure for the reduction of soil sealing in urban areas. This can be monitored using Copernicus and is perhaps more achievable to deliver rapidly through planning for sustainable development than to require a complete change of land use. It is comparable to Measure (29), which aims to provide ecological features within existing urban parks and streets.

AUSTRIA

Questions and comments to the CZ chair concerning the Nature Restoration Law

Ad chapter II)

Article 4:

- Are the target percentages in Art 4 (1) and 4 (2) considered as EU-wide targets whereas the concrete potential and attainability will only become apparent through the review by the Commission (according to Art 14) after a synopsis of all necessary documentation and plans provided by MS?

- We understand that according to the proposal restoration measures have to be put in place for at least 30% of the area of each group of habitat types that are not in a good condition. We are kindly asking for clarification whether this target of 30% applies to the respective group of habitats at large or whether it applies to each individual habitat type within the respective group.

- Please give details about the underlying data in order to assess whether the areas of Annex I habitat types are in a "good condition" or not.

- The term "improve to good condition" is unclear, especially in connection with the term "measures shall be in place".

- By setting a measure in the proposed timeframe, the referred improvement to "good condition" is not clear regarding the effectiveness of the measure, which depends on the undefined final time point for reaching the "good condition".

- In Austria there has been a major shift in land use categories over the last 70 years. Land was transformed for agricultural use, forestry use or even permanently sealed as urban areas expanded. It is not clear, how a member state should handle this, as the regulation clearly states „at least 70 years ". There are ecosystems and landscapes, that can hardly reach a state like it had 70 years ago, due to the huge change it is been through.

- A time-frame and criteria for “sufficient quality and quantity of habitats” is needed.

- A clarification for the term “project of overriding public interest” is needed. What is considered to be a project of overriding public interest?

Article 7:

- Without a clear definition of “free flowing rivers” (FFR), it is difficult to estimate the scope of possible restauration measures.

- How does the objective of "free flowing rivers" relate to the objective of "good ecological status" according to the WFD (Water-Framework Directive)?

- 25,000 km FFR is a target of the Union. How is the distribution among or the contribution of the MS envisaged?

- Can river stretches only be considered as free flowing if every barrier to longitudinal and lateral connectivity has been removed?

Article 8:

- When can we expect the adoption of the implementing acts to establish a method for monitoring pollinator populations?

- Do satisfactory levels for any of the indicators already exist?

- Will there be any specifications, e.g. regarding minimum values for satisfactory levels?

Article 9:

- Please clarify which agricultural areas/habitats are included by this regulation.

- Please specify what is meant by “restoration measures necessary to enhance biodiversity” in agricultural ecosystems.

- An essential requirement to calculate trends on agri-environmental indicators is the sufficient data basis and monitoring schemes. As the data basis for the indicators below differ both - quantitatively and qualitatively - between Member States, an EU-wide comparison will be difficult. The improvement of the data basis comes along with considerable time and financial barriers. Will there be any support from the EC for MS?

- Is it correct, that the baseline for the indicators below is the entry into force of the present regulation?

- Will there be any specifications from the European Union (e.g. regarding minimum values) for satisfactory levels?

- Will there be any financial and/or technical support by the EU in order to implement the methodology, for determining and monitoring the grassland butterfly index, referred to in Annex IV? Will there be synergies with the monitoring of pollinator populations?

Article 10:

- It should be clarified how the connectivity will get measured.
