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MEETING DOCUMENT

From: To:	General Secretariat of the Council Working Party on the Environment
Subject:	Nature Restoration Regulation: Working Party Environment meeting on 11 October 2022: Presidency Steering note

Delegations will find attached a steering note prepared by the Presidency with a view to the meeting of the Working Party Environment on 11 October 2022.



Presidency Steering Note

Working Party on the Environment 11th October 2022

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

Introduction

The Presidency proposes to continue the examination of the Proposal for a Regulation on Nature Restoration. Following the previous WPE meetings (July – September 2022) where first reading of the Proposal was finished, the Presidency puts forward a steering note in order to guide discussions during the WPE meeting on 11th September.

The meeting will aim to cover <u>Articles 1 - 5</u>.

First, key issues for the discussion and clarification in relation to each of those Articles have been identified by the Presidency based solely on the up-to-now received comments by Member States. Member States are invited to comment on these key issues.

In the second part of the steering note, the Presidency identifies possible textual changes in Articles 1 - 5, which are also suggested based on the Member States comments received in previous phases of negotiations. Delegations are invited to comment and, particularly, Member States that proposed suggested textual changes are encouraged to further explain these proposals.

Articles 1 to 5 Key issues to be discussed

Article 1:

- Clarification for the EU-wide 20% target and its translation to MSs levels (Art. 1.2);
- Structure of the text a suggestion for the political ambition (Art. 1.2) to be included **in the preamble** and legal targets in the body of the text;
- "All ecosystems in need of restoration by 2050" (Art. 1.2) vs. 90 % (in relation to the habitat types) in Art. 4.1.



Article 2:

 Clarification is still being asked for how the overseas/outermost territories are considered.

Article 3:

General issues

- Certain definitions still need to be **clarified**, **edited or added**;
- Identification of terms defined or established in the EU legal framework and their omitting, also adding a clear reference where used (e. g. habitats of the species);
- A **coherence of the definitions with the existing definitions** in the Habitats and Birds Directive and other EU environmental-related law;
- Unclear wording of some definitions, such as "to the highest level of condition attainable" or "satisfactory levels" – an extent to which these (or others) shall be defined;

Possible improvement of the current definitions

- Strengthening the definition of a "Good condition" among others in order to emphasize the relationship with the favorable conservation status concept of the Habitats Directive (different scale, good condition to be assessed at the level of the concrete areas/segments);
- Improving the definition of "restoration" in relation to the water and urban ecosystems;
- A clarification of the difference between the EUROSTAT definition for "Local administrative unit" and the definition laid out in the Proposal;
- Including the blue infrastructure in the Proposal (ponds, lakes, fountains are included in the "green urban area" CORINE Land Cover type); a clarification of the "green urban areas".

Possible addition of the new definitions

- Adding definition: "free-flowing rivers" e. g. "rivers or other surface water bodies (e.g. lakes) that are not impaired by artificial barriers and not disconnected from their floodplain." (see European Commission <u>Guidance on Barrier Removal for River Restoration</u>) and "barriers to lateral and longitudinal connectivity";
- Adding the definition of "rewetting" and "high-diversity landscape features";
- Including definitions on agricultural ecosystem, forest ecosystem, organic soils (the latter specified in the IPCC guidelines);



Adding the definition of active / passive restoration;

Article 4:

- The underlying data and baseline for the **(good) condition assessment** (Art. 4.1) in terms of the coherence with Habitats Directive obligations;
- A question of **(in)effectiveness of restoration measures** put in place (Art. 4.1 4.3) how to assess effectiveness in the given timeframe (no timeframe is given for reaching the "good condition");
- A possible need for **introduction of a time-frame** for restoration measures for habitats of species (4.3);
- How to assess "sufficient quality and quantity of habitats of the species" (Art. 4.3).

Relationship with the Habitats Directive and Art. 17 reporting
Clarify whether this obligation would only apply to those species whose quality and/or quantity of habitat is assessed as insufficient and is a limiting factor for achieving the favourable conservation status of the species.

Clarify, how to deal with Annex V species (not listed in Annex II) considering that the Directive sets only a general objective for Annex V species (favourable conservation status).

Relationship with the Birds Directive and Art. 12 reporting
How to proceed, taking into account that all birds are concerned by the Proposal
and habitat of birds is not assessed according to Art.12 BD reporting.

- "Non deterioration" concept how to apply this concept in practice e.g. in the
 agricultural and forest ecosystems, in urban ecosystems (a necessity for revision of
 land use and sectoral plans to take into account the legal requirement for nondeterioration, necessity to take this into account during SEA / EIA etc.);
- Added value of Art. 4.10.

Article 5:

- The differences between the habitat types from the Habitats Directive and EUNIS habitat types may introduce difficulties in monitoring and reporting (e. g. 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). Possibility to include only habitats from the Annex I of the Habitats Directive (Art. 5.1);
- An **assessment of condition of marine habitats** from Annex II of the Proposal 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 (Art. 5.1);
- An alignment with the Marine Strategy Directive framework to define the good environmental status of habitat types (Art. 5.1)



- The available **data on favourable reference areas for marine habitats** exist within the framework of the evaluations of Art. 17 for the habitats of Annex I of the Habitats Directive. Such information does not currently exist for each of the habitats listed in Annex II of the Regulation (Art 5.2).
- Unclarity on how the application of the Art. 5(3) can be ensured in view of the lack
 of correspondence between the habitats of species from the Habitats Directive
 and those listed in Annex III of the Proposal
- Setting equal restoration objectives for land and sea, neglecting current uncertainty about marine ecosystems (distribution and conservation status)
- Added value of Art. 5(10)

Specific drafting suggestions for the Article 5 of the Proposal proposed by one of the Member States are to be discussed bilaterally, due to their complexity.





Articles 1 to 5 - Table Proposed changes to the text based on the MSs comments

The following table covers the Articles 1-5 of the Proposal. It is based on the comments received by Member States until 30/9/2022, i.e. it focuses on those parts of the Proposal for which comments were received.

The **first column** is the original text of the Proposal.

The **second column** contains the text proposal(s) and suggested changes from Member States with the revised, added text <u>underlined</u> and deleted text in strikethrough.

The third column provides PRES comments on suggested changes and justification for a decision to accept / decline at this stage.



Original Text	Suggested changes in text based on the MSs comments	The PRES comments
Article 1 Subject matter 1. This Regulation lays down rules to contribute to: (a) the continuous, long-term and sustained recovery of biodiverse and resilient nature across the Union's land and sea areas through the restoration of ecosystems; (b) achieving the Union's overarching objectives concerning climate change mitigation and climate change adaptation; (c) meeting the Union's international commitments.	1(1) (b) "achieving the Union's overarching objectives concerning climate change mitigation, and climate change adaptation, and combating desertification;"); or: "achieving the Union's overarching objectives concerning climate change mitigation and climate change adaptation, and land degradation neutrality targets";	Possible compromise proposal : "achieving the Union's overarching objectives concerning climate change mitigation, and climate change adaptation; PRES understands that desertification might be proposed as MSs are party to the United Nations Convention to Combat Desertification (UNCCD), thus a synergy / alignment makes sense. Land degradation is a broader term which includes desertification, thus it might suit better.



2. This Regulation establishes a framework within which Member States shall put in place, without delay, effective and area-based restoration measures which together shall cover, by 2030, at least 20 % of the Union's land and sea areas and, by 2050, all ecosystems in need of restoration.

1(2)

"This Regulation establishes a framework within which Member States shall put in place, without delay, effective and areabased restoration."

Wording to be changed to for instance: "(...) effective and area-based restoration measures which together shall cover with the aim to cover, by 2030, at least 20 % of the Union's land and sea areas and, by 2050, all ecosystems in need of restoration."

"(...) at least 20 % of the Union's land <u>and</u> <u>20 % of the Union's</u> sea areas (...)"

"(...) area-based restoration measures which together shall cover, by 2030, at least 20 % of the Union's land and sea <u>ecosystems in need of restoration</u> areas and, by 2050, all ecosystems in need of restoration".

YES. The Proposal clearly specifies in its provisions the timeframe for putting the restoration measures in place; also legally this term does not bring new quality and would not speed up the implementation of the Proposal, as well as it is hardly quantifiable and enforceable. However the urgency to act is recognized.

More discussion needed. PRES would like to hear more on this during the WPE meeting.

YES. This brings more clarity to the text in relation to the geographical extent of the target.

NO. There is a difference between the scope of first sub-goal (EU lands and seas) and the latter (ecosystems). The first subgoal is bound to the territory of the EU and not to area of ecosystems in need of restoration.



Article 2	<u> </u>
Geographical	scope

This Regulation applies to ecosystems referred to in Articles 4 to 10:

- (a) in the territory of Member States;
- (b) in waters, the seabed and subsoil on the seaward side of the baseline from which the extent of the territorial waters is measured extending to the outmost reach of the area where a Member State exercises sovereign rights, in accordance with the 1982 United Nations Convention on the Law of the Sea.

2 (b)

"in waters, the seabed and subsoil on the seaward side of the baseline from which the extent of the territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises sovereign jurisdictional rights, in accordance with the 1982 United Nations Convention on the Law of the Sea."

More discussion needed. A proposal for aligning with the definition of "marine waters" in the EU Marine Strategy Framework Directive. However the definition in MSFD includes also "(...) with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French Overseas Departments and Collectivities". Also MSFD specifies the "coastal waters" in its Art. 3.1 (b) and this is not included in the definition.

Article 3 Definitions

The following definitions apply: (1) 'ecosystem' means a dynamic complex of plant, animal, and microorganism

communities and their non-

3(1)

'ecosystem' means a dynamic complex of plant, animal, <u>funghi</u> and microorganism communities and their non-living environment, interacting as a functional **YES**. Funghi represent a vital part of ecosystems as well as an important biodiversity indicator in some of them.



living environment, interacting as a functional unit, and includes habitat types, habitats of species and species populations; unit, and includes habitat types, habitats of species and species populations;

"(...) and includes habitat types, habitats of species and species populations <u>including</u> <u>intra-specific diversity</u>".

(3) 'restoration' means the process of actively or passively assisting the recovery of an ecosystem towards or to good condition, of a habitat type to the highest level of condition attainable and to its favourable reference area, of a habitat of a species to a sufficient quality and quantity, or of species populations to satisfactory levels, as a means of conserving or enhancing biodiversity and ecosystem resilience;

3(3)

A suggestion to add "<u>Restoration of the natural connectivity of rivers and natural functions of the related floodplains' must be understood according to the definitions set in 2.1 section of the Guidance on Barrier Removal for River Restoration (European Commission, December 2021)"</u>

NO. This may be redundant to add with regard to the purpose of the Proposal. Also brings too much detail where e. g. also genetic diversity would be missing. This would as well need to be aimed at in next Articles and in objectives of the Proposal somehow (as habitat types, habitats of species, species populations are, but no goals or obligations in relation to intraspecific diversity are included).

NO. Generally, the river ecosystems are restored by actively or passively assisting their recovery towards or to good condition. Therefore the existing definition covers this aspect. **PRES suggests that this is addressed in the Preamble**.



(4) 'good condition' means a state where the key characteristics of an ecosystem, namely its physical, chemical, compositional, structural and functional state, and its landscape and seascape characteristics, reflect the high level of ecological integrity, stability and resilience necessary to ensure its long-term maintenance;

3(4)

'good condition' means a state where the key characteristics of an ecosystem a habitat type, namely its physical, chemical, compositional, structural and functional state, and its landscape and seascape characteristics, reflect the high level of ecological integrity, stability and resilience necessary to ensure its long-term maintenance.

'good condition' means a state where the key characteristics of an ecosystem, namely its physical, chemical, compositional, structural and functional state, and its landscape and seascape characteristics, reflect the high level of ecological integrity, stability and resilience necessary to ensure its long-term maintenance;

3(6)

'sufficient quality of habitat' means the quality of a habitat of a species which allows the ecological requirements of a species to be met at any stage of its biological cycle so that it is maintaining itself on a long term basis as a viable component of its habitat in its natural range

More discussion needed. Only Articles 4-5 use the "good condition" term (in relation to habitat types). However the definition of "restoration" in Art. 3(3) of the Proposal uses "good condition" in connection with restoration of ecosystems for the purposes of the whole Proposal - even though this term is not used in Art. 6-10. Clarification needed for a relationship of "good condition" and Art. 6-10.

NO. The "landscape and seascape characteristics" term in definition of 'good condition' stresses the connectivity aspect. According to SEEA-EA, landscape and seascape characteristics are metrics describing mosaics of ecosystem types at coarse (landscape, seascape) spatial scales (e.g., landscape diversity, connectivity, fragmentation).

NO. The objective of restoration measures for the habitat of a species is that it can maintain itself on a long-term basis. Also see Habitats Directive "conservation status definition" (Art. 1 (i)).

ecological requirements of a species to be met at any stage of its biological cycle so that it is maintaining itself on a longterm basis as a viable

(6) 'sufficient quality of habitat'

a species which allows the

means the quality of a habitat of

component of its habitat in its natural range;



3(8) (8) 'pollinator' means a wild 'pollinator' means a wild animal insect which **Proposed change** based on a request for animal which transports pollen transports pollen from the anther of a plant clarification. As stated in the Commission from the anther of a plant to the to the stigma of a plant, enabling SWD (SWD(2018) 302 final) accompanying stigma of a plant, enabling fertilisation and the production of seeds; the EU Pollinators Initiative, section 1.1 fertilisation and the production "Mammals (particularly bats), birds (e.g. of seeds; hummingbirds) and lizards are important pollinators of certain flowers in subtropical and tropical environments. Such creatures are generally regarded as playing a marginal role in European environments, although they might be locally important". Therefore PRES suggests to limit the scope of the Proposal to pollinating insects. 3(9) (9) 'decline of pollinator 'decline of pollinators populations' means a **NO**. Even though the EU Pollinator populations' means a decrease decrease in abundance or diversity, or both, Initiative uses the "decline of pollinators" or in abundance or diversity, or of pollinators; "pollinator decline", Art. 8 uses "pollinator both, of pollinators; populations". Keeping the original wording is therefore suggested by the PRES for the moment; or changes in this regard would have to be made in Article 8 as well. 3(13) (13) 'urban green space' means 'urban green space' means all green urban NO. "Green urban areas" refer to a CORINE all green urban areas; broadland cover type – therefore it is only one of areas;, broad-leaved forests; coniferous leaved forests: coniferous the elements of "urban green space" along forests (...) forests; mixed forests; natural with the other ones specified in this grasslands; moors and provision. 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;	Change the definition "() on the basis of data provided by the Member States or, in their absence, by the Copernicus Land Monitoring Service ()"	Possible compromise proposal: "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, or other appropriate data provided by the Member States;" – Copernicus data shall be prioritized in order to ensure coherence of datasets across the Member
Article 4 Restoration of terrestrial, coastal and freshwater ecosystems 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.	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."	NO. Purpose of the change is not clear and it also does not seem to bring added value. More clarification on the aim is needed.



- 2. Member States shall put in place the restoration measures that are necessary to reestablish 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.
- 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

4(2)

"Member States shall put in place the restoration measures that are necessary to reestablish the habitat types listed in Annex I in areas not covered by those habitat types."

NO. Purpose of the change is not clear and it also does not seem to bring added value. More clarification on the aim is needed.

4(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 (...)"

NO. Purpose of the change is not clear and it also does not seem to bring added value. More clarification on the aim is needed.



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 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.
- 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:

4(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."

4(8)
A suggestion to add natural disasters.

NO. The Art. 1(e) of the Habitats Directive contains three criteria for assessment of the (favorable) conservation status. The proposal only operates with the structure and functions criteria and with the conservation status of the typical species, i.e. with criteria which are relevant in relation to 4 (1).

YES. PRES suggests to amend the letter (a) as follows: (a) force majeure <u>including</u> <u>natural disasters</u>;



(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.		
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.	4(9) A suggestion to add <u>natural disasters</u> .	YES. PRES suggests to amend the letter (a) as follows: (a) force majeure including natural disasters;
Article 5 Restoration of marine ecosystems 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.

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 5(1)

5(4)

Article.

"(...) the area of each group of habitat types listed in Annex II Directive 92/43/EEC that is not in good condition, (...)"

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, as referred to in Article

quality and quantity of the habitats of the

species referred to in paragraph 3 of this

1(e) of Directive 92/43/EEC, and of the

NO. An obligation of this provision is related to the Annex II of the Proposal, not of the Habitats Directive (Annex II of the Habitats Directive contains Species of Community Interest for which Natura 2000 sites shall be designated).

The determination of the most suitable **NO**. The Art. 1(e) of the Habitats Directive areas for restoration measures in the (favorable) conservation status. accordance with paragraphs 1, 2 and 3 of this Article shall be based on the best available knowledge and the latest scientific

contains three criteria for assessment of Proposal only operates with the structure and functions criteria.



II are in unknown condition shall be considered as not being in good condition.	"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 science and on the latest assessment, where available, of the condition of the habitat types listed in Annex II ()"	NO. Science is considered part of knowledge. Further clarification might be needed.
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.	5(8) A suggestion to add <u>natural disasters</u> .	YES. PRES suggests to amend the letter (a) as follows: (a) force majeure including natural disasters;
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	5(9) A suggestion to add <u>natural disasters</u> .	YES. PRES suggests to amend the letter (a) as follows: (a) force majeure including natural disasters;



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