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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 Articles 1-5.
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With a view to facilitate discussions at the WPE meeting of 27 October 2022, on the Nature Restoration Regulation, the Presidency invited delegations to submit comments on Articles 1-5 of the proposal (WK 13728 2022 INIT).

Delegations will find attached comments by BE, IT and PL on Articles 1-5.

POLAND

Article 1

Subject matter

1. Poland notes the short timeframe of the obligation to take action under the draft regulation. It is necessary to discuss this, as well as other deadlines for achieving the various stages of implementation of the draft regulation.
2. Poland believes that the present wording is unclear if it goes to the scope of the regulation. To make it more fit for purpose we propose:

Poland proposes to consider the following changes:

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 **in need of restoration*****
- (b) achieving the Union's overarching objectives concerning climate change mitigation and climate change adaptation;***
- (c) meeting the Union's international commitments.***

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 with the aim to cover, by 2030, at least 20 % of the Union's land and sea areas ecosystems in need of restoration and, by 2050, all ecosystems in need of restoration.~~

Article 3

Definitions

1 Definitions must be clear, transparent and understandable, leaving no margin for interpretation. Therefore, according to Poland, sufficient time should be given to this part of the project work

Poland proposes a change to the current definition

Ecosystem- means a dynamic complex of plant, animal, and microorganism communities and their non-living environment, interacting as a functional unit, and includes habitat types/natural habitat, habitats of species ~~and species populations~~

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;

favourable reference area- means the total area of ~~total area of a habitat type~~ ecosystem type in a given biogeographical region or marine region at national level that is considered the minimum necessary to ensure the long-term long term functioning ~~viability~~ of its components ~~and, 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~~

sufficient quality of species 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 can is maintaining itself on a long-term basis as a viable component of its habitat in its natural range;~~

sufficient quantity of species habitat- means the quantity 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 can is maintaining itself on a long-term basis as a viable component of its habitat in its natural range~~

pollinator- means a wild ~~animal~~ ~~insect~~ which transports pollen from the anther of a plant to the stigma of a plant, enabling fertilisation and the production of seeds;

decline of pollinators ~~populations~~- means a decrease in abundance or diversity, or both, of pollinators

and include the following definitions, which have not yet been included in the document

- 1) natural habitat - natural habitats means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural (according to habitats directive),

- 2) Restoration measure- Action aimed at assisting in the recovery of ecosystems that have been degraded or destroyed, as well as protecting the ecosystems that are not required any actions.
3. favourable conservation status – according to the habitats directive
4. favourable reference value: favourable reference range/ area/ population - terms currently used in reporting under Article 17 of the Habitats Directive to assess favourable conservation status - should replace imprecise and undefined type terms: 'highest level of condition attainable, satisfactory levels'.
5. Favourable reference range is the range within which all significant ecological variations of the habitat/species are included for a given biogeographical region and which is sufficiently large to allow the long-term survival of the habitat/species.
6. Favourable reference population is the population in a given biogeographical region considered the minimum necessary to ensure the long-term viability of the species.
7. Favourable reference area is the surface area in a given biogeographical region considered the minimum necessary to ensure the long-term viability of the habitat type; this should include necessary areas for restoration or development for those habitat types for which the present coverage is not sufficient to ensure long-term viability.
8. Forest ecosystem - a natural functional unit formed by the combination of communities of plants, animals and microorganism and their non-living environment, in which trees and their canopy give a specific character.
9. Resilience is defined as the capacity of an ecosystem to respond to a disturbance by resisting damage and recovering quickly [online] URL:
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4843670/>
or
Resilience has been understood as the capacity of a system to absorb disturbance and reorganize while undergoing change so as to still retain essentially the same function, structure, identity, and feedbacks. The focus is on the dynamics of the system when it is disturbed far from its modal state (Walker, B., C. S. Holling, S. R. Carpenter, and A. Kinzig. 2004. Resilience, adaptability and transformability in social–ecological systems. Ecology and Society 9(2): 5. [online] URL:
<http://www.ecologyandsociety.org/vol9/iss2/art5/>).
10. Surface water - means inland waters, except groundwater; transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters (*according to Water Framework Directive*);

11. River - means a body of inland water flowing for the most part on the surface of the land but which may flow underground for part of its course (*according to Water Framework Directive*);
12. Watercourse – river, stream, or canal and other waters flowing continuously or periodically through natural or regulated channels;
13. River barrier - a permanent anthropogenic structure that baffles a river across and cuts its free flow, such as a dam, weir or lock.

According to the ecosystem approach we propose in art. 4:

new wording of definitions:

14. Ecosystem - a dynamic complex of interrelated, mutually dependent and interacting abiotic elements that shape the environment of living organisms, and biotic elements - organisms living within the non-living natural environment, characterized by a specific structure and degree of complexity; elements of the ecosystem are natural habitats, species habitats and species populations;
15. Restoration- means the process of actively or passively assisting the recovery of an ecosystem towards or to good condition as a means of conserving or enhancing biodiversity and ecosystem resilience;
16. good condition- means a state where the key characteristics of an ecosystem, namely its physical, chemical, compositional, structural and functional state, reflect the high level of ecological integrity and resilience necessary to ensure its long-term maintenance;
17. Favourable reference area- is the surface area in a given biogeographical region or marine region considered the minimum necessary to ensure the long-term viability of the habitat type; this should include necessary areas for restoration or development for those habitat types for which the present coverage is not sufficient to ensure long-term viability.
18. sufficient quality of habitat- means the quality of a habitat of a species necessary to ensure maintaining this species on a long-term basis as a viable component of its habitat in its favourable reference range;
19. sufficient quantity of habitat- means the quantity of a habitat of a species necessary to ensure maintaining this species on a long-term basis as a viable component of its habitat in its favourable reference range;

Article 4

Restoration of terrestrial, coastal and freshwater ecosystems

General comments

1. The percentages proposed in Article 4 of the areas on which Member States will be required to take action by 2030 and beyond to 2050, in the context of forest ecosystems, are unrealistic and unachievable.
2. Poland indicates that the proposed project should focus on larger units such as ecosystems, instead of referring to top-down/authoritative selected habitat types. The above approach would allow member states to carry out activities that are more tailored to local, regional and national needs and would allow for an umbrella effect. Measures to improve the conservation status of specific habitat types by improving arbitrarily selected indicators will not necessarily lead to actual improvements in the state of the EU's natural resources.
3. Poland proposes to remove paragraph 2, which talks about restoring habitat types from Annex 1 in areas that do not include these habitat types. Such action in many cases may prove very difficult or even impossible to implement
4. Poland points out that there is lack of a common EU-wide method of assessing habitat condition (different indicators in different countries and different ways of assessing condition). Also It should be pointed out that currently, according to the methodology for assessing the status of habitats, it is enough for only one of the indicators to be assessed at the level of U2, so that the entire habitat, despite the other indicators at FV, receives a grade of U2 - this results in an underestimation of habitats and leads to incorrect conclusions.
5. With regard to paragraph 4, it is incomprehensible to say that the absence of a status assessment means bad / inappropriate conservation status. Of the forest habitat types, for example, almost 30% in the EU are in unknown condition, which does not necessarily mean that their conservation status is inappropriate or bad.
6. Based on the overarching goal of the draft regulation expressed in Article 1, which relates to the restoration of ecosystems, with regard to the provisions of paragraph 5, Poland notes that activities should include improving connectivity between ecosystems, not habitat types in Annex I.

7. Poland proposes to include in paragraph 6 the provision from paragraph 7, but with a note that member states will make every effort to ensure that the condition of the areas covered by reconstruction measures does not deteriorate. Ensuring that this will definitely not happen is impossible.
8. Poland requests that among the derogations to the system adopted in Article 4 (8) and (9), should be listed: ecological succession as a natural processes of the transition of one type of natural habitat into another.
9. Poland points out that member states have a limited potential pool of available land - agricultural, forest, green, urban areas - which should synergistically pursue a long catalog of goals imposed by numerous strategic and legislative documents. In particular, priority goals include energy security, food security, climate change adaptation and nature conservation, and, more recently, the expansion of renewable energy generation capacity. Member states may have to choose between the above priorities, which at least will put the implementation of key investments at risk.

Poland proposes to modify the text to have obtain ecosystem approach:

Article 4.

1. Member States shall put in place the restoration measures that are necessary to improve to good condition ~~ecosystems~~ ~~areas of habitat types~~ listed in Annex I [based on converting data from CORINE Land Cover with help of Copernicus into ecosystems types] ~~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 ecosystems habitat types listed in Annex I European Nature Information System that is not in good condition, as quantified in according to the quantified scope 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 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. To meet the target set out in paragraph 1 Member States shall put in place the restoration measures for the terrestrial, coastal and freshwater ecosystems based on protection of habitat types typical for the species.

~~listed in Annex I to Directive 92/43/EEC and habitats of the species of the species listed in Annexes II, IV and V to the above-mentioned Directive 92/43/EEC natural habitat types listed in Annex I and of the terrestrial, coastal and freshwater habitats of wild birds covered by Directive 2009/147/EC protected under Natura 2000 network that are necessary to improve the quality and quantity of those natural habitat types and habitats of species, 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 of this Article~~ shall be based on the best available knowledge and the latest scientific evidence on i.a. ~~provided ecosystem services, presence of the species from the red list and of the condition of the habitats types listed in Annex I of the Habitats Directive, 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.~~

5. The restoration measures referred to in paragraphs 1 shall consider the need for improved connectivity between the ecosystems ~~habitat types~~ listed in in Annex I [based on converting data from CORINE Land Cover with help of Copernicus into ecosystems types] ~~Annex I~~ and take into account the ecological requirements of the species referred to in paragraph 3 that occur in those ~~habitat types~~ ecosystems.

6. Member States shall ensure that the ~~condition of 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 strive 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 I occur do not deteriorate.~~

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.~~

~~(d) natural succession processes~~

~~(e) natural disasters including insect outbreaks, pathogenic fungi, nematodes or other biotic factors affecting ecosystem stability~~

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(3, 4) of the Directive 92/43/EEC.

~~(d) natural succession processes~~

~~(e) natural disasters including insect outbreaks, pathogenic fungi, nematodes or other biotic factors affecting ecosystem stability~~

10. Member States shall ensure that there is:

(a) an increase of ~~habitat~~ area in good condition ~~for habitat types listed in Annex I of ecosystems listed in Annex I [based on converting data from CORINE Land Cover with help of Copernicus into ecosystems types] until at least 90 % of these ecosystems are 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.

Article 5.

Restoration of marine ecosystems

General comments:

Regional Sea Convention (HELCOM) has adopted in October 2021 updated the Baltic Sea Action Plan (BSAP). One of tasks is to establish a strategy for the restoration of habitats until 2030. Hence, it is not possible for Poland to achieve 30% restoration of the habitat extent without appropriate programme of measures. Additionally, important issue is interaction between habitats within national waters with waters of neighbouring countries.

Poland proposes to modify the text of:

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 ~~20382030~~, at least 60 % of that surface by ~~20442040~~, and 100 % of that surface by 2050*
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BELGIUM

Comments on the proposal of regulation on Nature Restoration following the Presidency steering note WK 13444/2022 INIT on articles 1 to 5

Article 2:

On 2(b): we propose the following wording to clarify the provision and to be coherent with other provisions: “*where a Member State has ~~exercises~~ sovereign rights, in accordance with the 1982 United Nations Convention on the Law of the Sea*”. The language of the UN Convention on the Law of the Sea refers indeed to “*sovereign rights*” and not “*jurisdictional rights*”. It would thus be better to talk about “*having*” sovereign rights rather than “*exercising*” them (as there is no need to have already exercised these rights).

Article 3:

- BE supports the SJCUE proposal to mention when the concepts and definitions come from other legislation to facilitate coherence;
- BE supports the inclusion of the blue infrastructure;
- BE can supports the additions of the new definitions proposed by PDCY as long as they not render the text too complex;
- BE keeps scrutiny reservation on the 3.15 as the definition of ‘renewable go-to areas’ is under discussion.

Article 4:

We maintain a scrutiny reservation the article, specifically on 4.8 and 4.9 (written comments will follow later).

- Art 4(5): why shall the restoration measures be limited to “*taking into account the ecological requirements of the species*”? The measures should respect these ecological requirements and be based upon them. In addition, on the improved connectivity between habitats type: is this to be seen inside or outside Natura 2000?
- Art 4(6): this sub-paragraph should mention, on top of the continuous improvement of the quality, “*the continuous improvement of the quantity of the habitats of species referred to in paragraph 3, until the sufficient quantity of those habitats is reached*”. Both are needed to fulfil the target of article 4.3.

- On art. 4.8 and 4.9: urgent legal advice is required:
 - Art. 4.9 is adding nuances to the Habitats Directive.
 - Art.4.8.c introduces a similar type of "assessment" as in art.6.4 of the Habitats Directive, without the notion of "*compensatory measures*". This means that the situation outside Natura 2000 would be more stringent or more strict than within Natura 2000, which would be a contradiction.
 - In both art.4.8.b and 4.9.b: doubts are on how "*the unavoidable habitat transformations caused by climate change*" would or should be established and who and when this type of argumentation should be argued.
- In addition on art. 4.8: like in Natura 2000, this will require actions outside Natura 2000 to lower general and specific environmental pressures on the ecosystems outside Natura 2000. This seems a logic consequence of the approach of this regulation, but a specific provision in this regulation to do that, is missing. Since this will require potential strong interference with all kinds of activities everywhere outside Natura 2000, a specific legislative base should be included in this draft regulation. This item should first of all be clarified from a legal and technical point of view.

Article 5:

- BE shares the concerns over the differences between the habitat types from the Habitats Directive and EUNIS habitat types in terms of difficulties in monitoring and reporting.
- BE agrees to the remark on the assessment of conditions of marine habitats from Annex II. If the assessment at EUNIS4 level applies, the cost for making the assessment could increase (considerably).
- BE agrees to the remark on the alignment with the Marine Strategy Directive framework (to define the good environmental status of habitat types) and would like to point out that alignment in reporting between the MSFD and Nature Restoration Law is necessary as well to reduce the administrative burden of the MS. Currently MSFD would need to be reported by 2030 and nature restoration law by 2031.
- BE agrees on the remark over the lack of available data on favourable reference areas for marine habitats for each of the habitats listed in Annex II.
- BE agrees on the remark over the lack of correspondence between the habitats of species from the Habitats Directive and those listed in Annex III.

- In between targets it can be mentioned specifically to map out the distribution and conservation status of the marine environment ; but the lack of current knowledge about the status should not be a reason to weaken the objectives.
- Art 5.5: why shall the restoration measures be limited to “taking into account the ecological requirements of the species”? The measures should respect these ecological requirements and be based upon them.
- Art 5.6: this sub-paragraph should mention, on top of the continuous improvement of the quality, “the continuous improvement of the quantity of the habitats of species referred to in paragraph 3, until the sufficient quantity of those habitats is reached”. Both are needed to fulfil the target of article 5.3.
- BE agrees on the remark on the added value of 5.10: it seems to be a repetition of text mentioned before

Additional remarks:

- Somewhere in the text it should be mentioned that no Strategic Environmental Assessment is required, since the linkage with the marine spatial plan is made already.
- If both renewable energy development and activities where common fisheries policy applies are prioritized above nature restoration, achievement of the set obligations and targets within the nature restoration law for the marine environment is nearly impossible. Therefore, we propose that an analysis of the EU legislation conflicting to the nature restoration law should be made, in order to identify obligations standing in the way of good implementation of the NRL and, where possible, to simplify existing regulations with the “one in, one out” principle.

Editorial Comments

In addition to the editorial comments already submitted (on the different numbering of the French version and on the misleading translation on art.6), it has to be pointed out that:

- While in the steering note, PDCY states that “*Green urban areas [...] is only one of the elements of urban green space along with the other ones specified in this provision*”, in the French version (art.3.17, corresponding to 3.13 of the EN version) the “other elements” are between dashes. Moreover, “urban areas” and “urban spaces” are both equally translated “espaces verts”.

ITALY

Comments on the proposal for a Regulation on nature restoration

As a general comment, Italy maintains that it is necessary that the Nature's Restoration Law and relative definitions of terms are harmonized and kept consistent with the post 2020 Global Biodiversity Framework to the CBD and, consequently, development of indicators, reporting and timelines are aligned, in order to enhance consistency, transparency and to avoid misaligned reporting commitments that will only duplicate the work of member countries and institutions involved. For the same reasons we reiterate that it would be desirable also a temporal coherence in terms of review, monitoring and reporting (Articles 15, 17 and 18), between this Regulation (3 years), EU Biodiversity Strategy for 2030 (mid-term review 2024), the Birds and Habitats Directives (6 years), Marine Strategy Framework Directive and Water Framework Directive.

Furthermore, we hope that the information collected and reported under the Natura 2000 directives and more generally the monitoring systems that already operate in the MS, can be used as much as possible for the reporting envisaged by this regulation. This would allow MS to take full advantage of the data collected as part of these activities, avoiding unnecessary overlap and waste of resources.

Comments on the Presidency Steering Note (WPE – 11 October 2022)

We need more time to develop in-depth considerations therefore we put a reserve of analysis to the articles from 1 to 5.

Some preliminary comments are reported below.

Article 1:

- Paragraph 1, letter b:
we share the proposal to add "*land degradation*" to the objectives.
- Paragraph 2:
we agree with the position of Presidency in order to ensure a clear coverage of European surfaces (20% of the Union's land and 20% of the Union's sea areas). Moreover, the proposal to replace the words "which together shall cover" with the words "with the aim to cover" is shared. The use of "with the aim to cover" seems to be more focused and less object of interpretation.

Article 3:

- Paragraph 1

'ecosystem' means a dynamic complex of plant, animal, fungi and microorganism communities and their non-living environment, interacting as a functional unit, and includes habitat types, habitats of species and species populations;

We suggest to summarize plant, animal, fungi and microorganism as "living organisms".

- Paragraph 3

We do agree with the Presidency about considering in paragraph 4 the "landscape and seascape characteristics".

- Paragraph 4

We do not agree with substitution of ecosystems with habitat type for coherence with other definitions in the article 3 and 4.

- Paragraph 3(13)

Thank you for the explanation, we agree with the Presidency position, and we suggest to add "other vegetated areas" in order not to leave out anything (e.g. semi-natural grasslands): ...

*'urban green space' means all green urban areas; broad-leaved forests; coniferous forests; mixed forests; natural grasslands; moors and heathlands; transitional woodland-shrubs, ~~and~~ sparsely **and other** vegetated areas - as found....*

We agree with the Presidency suggestion to add "or other appropriate data provided by the Member States" in the definition of Urban green space.

We suggest to add the following definitions to the list of Art. 3:

- "Active restoration" means human interventions through management techniques, such as transplanting or deployment of artificial structures, to allow ecosystems, habitats or species populations to recovery.
- "Passive restoration" means the removal of impacts, such as pollution or mechanical actions, to favour the natural recovery of ecosystems, habitats or species populations.
- barriers to longitudinal and lateral connectivity of surface waters
- habitat

Articles 4 and 5:

As a general comment, we share the other MS concerns about the difficulty of ensuring the non-deterioration of all ecosystems, especially of those that are outside protected areas and N2000 network.

- Commas 8 and 9 (c)

We foresee the necessity to explicitly define the level (European or national) for decision about the public interest and to establish specific references for the comparison between alternatives, being this a very critical point in SEA and EIA.

It is shared the decision to include natural disasters between the causes of non-fulfilment of the obligations.

Annex I

We point out an error in Annex I: the Habitat type code referred to “Mudflats and sandflats not covered by seawater at low tide” included in “Coastal and salt habitats” is 1140 and not 140.
