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INFORMATION

From:	General Secretariat of the Council
To:	Working Party on the Environment

Subject:	Nature Restoration Regulation: Non-Paper from the Commission
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Delegations will find attached a Non-Paper from the Commission, as a contribution to the ongoing discussions on the proposal for a Nature Restoration Regulation, outlining possible ways forward, including on the provisions which were highlighted as potentially limiting different economic activities.

NON-PAPER ON THE NATURE RESTORATION LAW (NRL)

June 2023

The Commission proposed on 22 June 2022 a **Regulation on nature restoration (NRL)**. The proposal will contribute to the long-term and sustained recovery of nature across the EU's land and sea areas and to achieving Union climate mitigation and climate adaptation objectives.

The Nature Restoration proposal is the flagship proposal of the biodiversity pillar of the European Green Deal. It has strong interlinkages with the EU's climate mitigation agenda and the Fit for 55 package, in particular the obligation under the EU Climate Law to enhance removals by natural sinks and the obligations under the LULUCF legislation.

Nature Restoration is also a *conditio sine qua non* for climate adaptation. It is essential for enhancing the productivity and resilience of forest and agricultural land, which is already severely threatened by the growing impacts of climate change in almost all parts of Europe, with droughts, fires and degraded soils that risk food production and livelihoods, especially in rural areas. The proposal also addresses urban greening to lower temperatures, cooling needs and energy bills in cities, as well as floodplain and river restoration, which helps to reduce the negative impacts of floods on European citizens and businesses.

The NRL proposal is key to delivering on EU's global biodiversity commitments agreed at COP15 in Kunming/Montreal in December 2022, in particular the commitment on ecosystem restoration. The EU was instrumental in achieving an ambitious result at COP15 and is expected to demonstrate global leadership also during the implementation phase.

The NRL proposal is based on a thorough impact assessment, which is the result of broad consultations and data collection, as prescribed by the Commission Better Regulation guidelines¹. In addition, as it announced at the time of adopting the proposal, the Commission has since **published a study into the drivers of food security**², which underlines that climate change and biodiversity loss are the biggest threats to our food security, in Europe and across the world, further demonstrating the need for ecosystem restoration. The **Commission will soon also make available additional information and data, in particular on the link between nature restoration, food security and the resilience of food production.**

Restoring nature as provided in the NRL proposal would lead to **strong economic benefits: every euro invested is estimated to result in at least 8 euro in benefits.** According to the World Economic Forum, over half of the world's GDP depends on healthy nature. Many EU companies are heavily and directly dependent on ecosystem services: the food and beverages, construction and tourism sectors are obvious examples.

It is important to note that the **NRL does not impose the creation of new protected areas.** While nature restoration will have to take place in the existing protected areas that are not in a good ecological condition, **restoration measures can go very well hand-in-hand with economic activity.**

¹ The Impact Assessment on the proposal can be found here: https://environment.ec.europa.eu/publications/nature-restoration-law_en

² [Analysis of main drivers on food security \(europa.eu\)](#)

Several key developments have taken place since the Commission presented the NRL proposal. To support the inter-institutional discussions, the Commission can envisage the following way forward.

Way forward

Since the adoption of the proposal in June 2022, the Commission has engaged with the co-legislators at technical and political level and has clearly signalled that – in line with its institutional role during the legislative process – it is fully committed to constructively help to find viable solutions to the issues raised. In the meetings of the Council Working Party on Environment, Member States have highlighted several points for clarification and possible modifications. Similar points were raised in the amendments tabled in the European Parliament’s ENVI, AGRI and PECH committees.

As a contribution to the ongoing debate of the co-legislators, **this non-paper outlines possible avenues for moving forward, as a basis for further discussions**, specifically on those provisions that have been highlighted as potentially limiting the possibility of Member States to develop economic activities. Those concern:

- **EU targets:** The Commission proposal was presented shortly before the international agreement on the Global Biodiversity Framework - which includes a target on nature restoration (Target 2) - was reached. To fully reflect the international ambition and clarify that the NRL is the main piece of legislation to implement at EU level the agreed international target on nature restoration, the Commission is open to align the wording of the NRL 2030 target to the wording of the internationally agreed target.
- **Non-deterioration:** Concerns have been voiced that the provisions requiring the non-deterioration of habitat types could create issues for future developments, e.g. for housing, renewable energy or other socio-economic activities, especially in densely populated areas. On this important issue, the Commission would like to highlight that:
 - The NRL proposal includes clear exceptions from the non-deterioration principle, among which an exception for projects “of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis”.
 - The obligation set out in NRL for areas outside Natura 2000 is less strict than the existing obligation that applies to Natura 2000 sites under the Habitats Directive, as NRL requires neither an appropriate assessment for projects of overriding public interest (OPI) nor any compensation for those OPI projects that lead to deterioration.
 - The non-deterioration provisions can be reformulated to make the obligation effort-based, i.e. requiring efforts by the Member States (putting in place measures) but not a specific outcome (ensuring effective non-deterioration) and to specify that regional and local specificities are to be taken into account by the Commission when assessing the national restoration plans.
- **Alignment with RED III and the goal of accelerating the deployment of renewables:** Questions have been raised about the compatibility of certain provisions of the NRL proposal

with the EU renewable energy targets. Renewables deployment is a key priority of the EU and lies at the heart of the European Green Deal. The fast deployment of renewable energy has been defined as a key priority not only to achieve climate targets but also to become independent from Russian fossil fuels³.

The NRL proposal is neither an alternative to nor in conflict with the deployment of renewables. To the contrary, renewables deployment could in many cases reinforce nature restoration and improve biodiversity. For example, offshore wind installations can offer space where fish stocks recover, and can be combined with food production from sustainable aquaculture; submerged parts of wind turbine structures act as artificial reefs, providing new habitats for marine life; solar farms can be combined with wildflower meadow vegetation to support the restoration of bees and other pollinators. This has also been highlighted by industry representatives in public letters. NRL encourages such positive practices and synergies between renewable energy projects and restoration. However, it does in no way mandate any specific practices, nor does it change the agreed approach under RED III to accelerate permitting and renewable energy deployment. To further clarify this and address the concerns raised by Member States and Members of the European Parliament, the following options could be considered:

- The overriding public interest provision under RED III, which aims at facilitating the fulfilment of one of the conditions set out in specific EU environmental legislation by establishing a presumption of overriding public interest for renewable energy projects, refers to the Habitats, Birds and Water Framework Directives. The same provision on the overriding public interest of renewables deployment can be explicitly included in NRL and hence, established for NRL as well.
- The Commission is ready to clarify how the planning of restoration activities can be consistent with the possibility to designate areas subject to restoration measures also as renewables acceleration areas or dedicated grid areas.
- The Commission is also ready to help ensure that the deployment of offshore installations is not hindered by the restoration of soft sediment habitat types (Group 7). This could be achieved by lowering the ambition of the restoration targets for this group of habitat types, provided that the achievement of the existing obligations under the EU Marine Strategy Framework Directive is not prevented.
- **Alignment with the Critical Raw Materials Act:** Critical raw materials are crucial for the green and digital transitions, and the Commission has recently presented a proposal for a Critical Raw Materials Act (CRMA), which aims to secure a sustainable and competitive critical raw materials value chain in Europe. The CRMA proposal aims in particular to ensure an acceleration of projects' approval for critical raw materials while providing environmental safeguards.

³ Much has been achieved to speed up permitting and renewable energy deployment since the NRL proposal was tabled in June 2022. The Council adopted the Emergency Regulation under Article 122 TEU, and political agreement on the revised Renewable Energy Directive (RED III) was found.

As the CRMA was proposed after the NRL, and to increase policy coherence and clarity, the Commission is open to reflecting those CRMA priorities and goals in NRL and to considering including dedicated language in the NRL proposal, in line with the CRMA proposal.

- **Urban ecosystems:** The proposed NRL urban greening targets, inspired by the good practices of many European cities, are important to adapt cities to the impacts of climate change by lowering temperatures and reducing urban heat island effects. The targets aim to ensure that more green is integrated to urban development to provide a healthier, cleaner and more enjoyable living environment to the 40% of EU citizens that live in cities. Electricity costs for cooling would also go down, given the temperature-lowering effect of urban green.

While the proposal already includes several flexibilities, the Commission is ready to consider further flexibility to better address large divergences within and between Member States regarding urban green, notably in relation to those towns or cities that already have very large green areas. This could be achieved by setting a threshold above which such towns or cities would not count for the purposes of applying the no-net-loss provision. In addition, the Commission is ready to consider replacing the quantified targets with an obligation to ensure increasing trends for both urban green space and tree canopy cover at national level.

- **Reference to 10% of high-diversity landscape features on agricultural land:** The Commission would like to clarify a number of elements and provide possible options to address the concerns raised in relation to the reference made in NRL to 10% high-diversity landscape features:
 - High-diversity landscape features as defined in NRL are particularly important for the resilience and adaptation of agricultural land, and for ensuring long-term agricultural production in the context of climate change. Such landscape features prevent soil erosion, reduce wind speed, help retain water and nutrients in soil, and help build resilience against floods, droughts, landslides and mudslides. They also provide habitats for pollinators and pest predators, enabling pollination and biological pest control.
 - The definition proposed in NRL allows to count in productive elements, such as fruit and nut trees.
 - The figure of 10% landscape features in NRL is not a mandatory target, neither for individual Member States, nor at farm level, and hence there is no obligation at all for individual farmers to take 10% of their land out of production. It is mentioned in NRL only as a benchmark referring to the EU-level political objective set in the EU Biodiversity Strategy for 2030.
 - Member States would only be asked to increase the share of agricultural land with high-diversity landscape features at national level until a satisfactory level is reached. Member States would define themselves, in their national restoration plans, the satisfactory level they aim to achieve, and that level could be below 10%.
 - Already today, Member States have different ambition levels on landscape features. On the basis of all national restoration plans, the Commission would be able to assess whether, when putting all plans together, the EU as a whole would reach the 10%

political goal or not. Since this is a benchmark, not reaching it could not be held against any individual Member State or farm.

- The Commission is ready to consider further flexibility for Member States by:
 - Allowing them to complement the proposed monitoring method (LUCAS land survey) with their own methods, thereby better capturing the productive elements that fall under the NRL definition. In addition, it will be important to regularly update the LUCAS methodology to enhance the reliability of the data, and the Commission is committed to doing it.
 - Listing in an exhaustive manner the high number of features that would count towards the EU-wide goal.
 - Acknowledging that if a productive use of landscape features is necessary for the preservation of biodiversity, such features could nevertheless count towards the target.
 - Should co-legislators ask for it, considering the deletion of the reference to 10%, as it is a political EU-level objective already established in the EU Biodiversity Strategy for 2030, and the Commission could assess progress towards its achievement even in the absence of NRL provision.
- **Restoration of drained peatlands:** The proposed NRL targets on restoring and rewetting organic soils are strongly interlinked with the EU's climate commitments, as they have a high potential to reduce GHG emissions. Regarding agricultural land, restoring drained peatlands is one of the most cost-effective measures to reduce greenhouse gas emissions in the agricultural sector, and it provides simultaneously important biodiversity benefits.

While constituting a relatively small portion of all agricultural areas (roughly 3% of EU agricultural area), drained peatlands under agricultural use cause 25% of the GHG emissions of the EU's agricultural sector. Calculations show that restoration activities on agricultural land could – at EU level – generate more than half the effort required to meet the agreed LULUCF targets for 2030. Conversely, doing nothing on such drained peatlands would pose a serious risk to or even prevent the achievement of EU and national LULUCF objectives.

At the same time, when developing the NRL proposal the Commission recognised that some regions and some Member States have a higher percentage of drained peatland under agricultural use than others. This requires flexibilities to avoid any disproportionate impacts on the most affected Member States or areas. That is why the NRL proposal includes two flexibilities to allow Member States to restore and partially rewet drained peatland in other relevant areas, such as peat extraction sites and or other land uses, instead of agricultural land.

The peatland targets are also aligned with the Common Agricultural Policy (CAP). The 2023-27 period introduced a new GAEC standard on the protection of wetlands and peatlands, requiring Member States to identify land management practices that avoid carbon release, such as low tillage, a ban on the conversion of wetlands and peatlands, or a ban on the drainage or burning and extraction of peatland.

Taking those elements into account, the Commission:

- is ready to consider further flexibility, e.g. by increasing the share of drained peatlands that can be rewetted on land that is not under agricultural use;
- fully recognises the importance of involving farmers and landowners and making rewetting economically attractive for them, including through financial support, recognising the high value of the ecosystem services provided, as well as through new business models and income possibilities such as carbon farming.
- **Funding and financial compensations:** Both the European Parliament and the Council have raised the need for additional financing for restoration, notably through a dedicated fund on nature restoration. Concerns have also been raised on the need for the proposal to be more explicit on financial compensations, in particular for farmers or foresters, in case the restoration measures negatively impact their activities. The Commission would like to point out that:
 - Farmers, fishers, foresters and other land owners and managers are not expected to bear the costs of nature restoration. To the contrary, those who will contribute to reaching the targets should not only be compensated, but be rewarded for the high value of the ecosystem services they will provide.
 - Funding needs for EU nature restoration have been estimated at EUR 6-8 billion per year. Several opportunities are available at the EU level. In particular, the co-legislators have decided that the CAP 2023-2027 (EUR 387 billion) must support interventions fulfilling its nine specific objectives, among which to ‘contribute to the protection of biodiversity, enhance ecosystem services and preserve habitats and landscapes’. The CAP should, therefore, work in synergy with restoration efforts.
 - Moreover, the European Maritime Fisheries and Aquaculture Fund, the Programme for the Environment and Climate Action (LIFE), the European Regional Development Fund, the Cohesion Fund and the Just Transition Fund, as well as Horizon Europe and InvestEU, likewise support nature restoration.
 - The Recovery and Resilience Facility is a further source of funding for the protection and restoration of biodiversity and ecosystems.
 - Overall, the EU agreed to dedicate 7.5% in 2024 and 10% in 2026 and 2027 of annual spending under the current Multiannual Financial Framework to biodiversity objectives, including nature restoration. The EU (draft) budgets are expected to reach 8% in 2024 but only ca. 9% in 2026 and 2027. Including the Recovery and Resilience Facility, there are an estimated EUR 112 billion in total available for biodiversity and ecosystem restoration for the period 2021-2027 (i.e. EUR 16 billion per year on average). The proposal could explain further how this could be used by Member States in order to provide financial compensations, as relevant.
 - At the national level, Member States budgets are already mobilizing 14 billion EUR per year for biodiversity, including ecosystem restoration.

- The 2022 Guidelines on State aid for climate, environmental protection and energy offer large possibilities of funding nature restoration by Member States.
- There is significant potential for leveraging private and public/private investments – for instance through the EU taxonomy, and the Business for Biodiversity movement. Through the InvestEU programme and the GreenAssist initiative, the Commission is working with the European Investment Bank and other implementing partners to build a pipeline of green investments and scale up public/private blended finance for nature restoration.
- Next to that, the Commission will create new tools and business models to provide additional income opportunities for capturing carbon and improving biodiversity to land owners and managers. A key initiative here is the Carbon Removal Certification proposal that is currently being negotiated by the co-legislators.
- The Commission will promote effective biodiversity mainstreaming across all relevant Union programmes and financing instruments and is committed to exploring further options as considered useful by the co-legislators. The Commission stands ready to:
 - support Member States enhance their capacity to absorb Union funds for biodiversity, including by providing training and technical support;
 - assess any gaps between the Member States' restoration funding needs from the EU budget and the Union funding available for supporting them in the implementation of this Regulation, and identify potential solutions to bridge the identified gaps.
- **Reference to 70 years:** The NRL proposal refers to “the documented losses over at least the last 70 years” as a reference point, so that Member States would look at historical records of habitats' distribution on their territory and take this data into account when designing their National Restoration Plans and establishing their nature restoration needs, priorities and measures. Concerns have been raised that this provision could be interpreted as a requirement for Member States to restore their nature to the condition in the 1950s which is obviously not the case. To clarify this, the Commission can support a different language, which however still serves the purpose of providing a reference to historical records.
- **Including a “stepwise” approach to designing the National Restoration Plans:** The Commission is ready to consider breaking down the process of preparing National Restoration Plans into different steps. The first plans could focus on measures aiming to reach the 2030 targets, and only give a strategic overview for the period beyond; subsequent revision(s) could then cover the period up to 2050. Regional and local specificities would be taken into account both by Member States when preparing their Plans and by the Commission when assessing them.