



Brussels, 2 December 2022
(OR. en)

15473/22

LIMITE

ENV 1229
CODEC 1905
CLIMA 642

**Interinstitutional File:
2022/0195(COD)**

NOTE

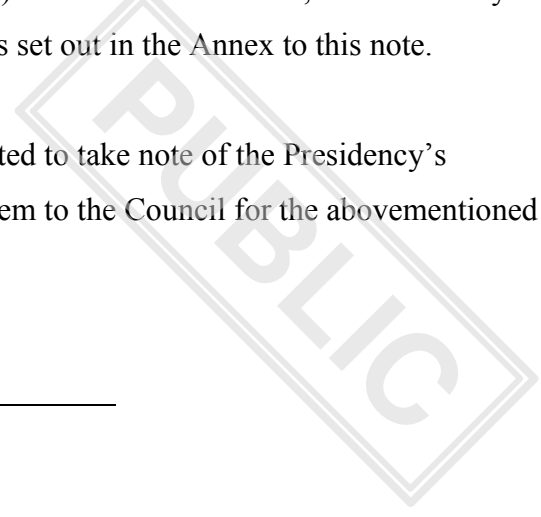
From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council on nature restoration - Policy debate

1. On 22 of June 2022, the Commission adopted a proposal for a Regulation on Nature Restoration.¹ The proposal aims to repair European habitats that are in poor condition, and to bring back nature to all ecosystems, from forest and agricultural land to marine, freshwater and urban ecosystems. Under this proposal, legally binding targets for nature restoration in different ecosystems will apply, complementing existing laws. The aim is to cover at least 20% of the EU's land and sea areas by 2030 with nature restoration measures, and eventually extend these to all ecosystems in need of restoration by 2050.
2. The Commission presented its legislative proposal and the accompanying impact assessment to the Working Party on the Environment (WPE) on 7 July 2022. The WPE held substantive discussions on the proposal over the course of another 9 meetings. Based on these discussions and on comments submitted by delegations, the Presidency prepared a first compromise text for Articles 1-10² and identified two issues requiring political guidance from the Council.

^{1.} 10607/22 - COM(2022) 304 final.

^{2.} 14884/22.

3. In order to guide the discussion on the abovementioned legislative proposal at the forthcoming meeting of the Council (Environment) on 20 December 2022, the Presidency has prepared a background paper and two questions, as set out in the Annex to this note.
4. The Permanent Representatives Committee is invited to take note of the Presidency's background paper and questions and to forward them to the Council for the abovementioned policy debate.



**Proposal for a Regulation of the European Parliament and of the Council on
nature restoration**

- Presidency note -

Protecting nature has been a vital element of the Birds and Habitats Directives, the backbone of European Union nature conservation policy, for decades. Their Fitness Check evaluation, published in 2016¹, concluded that, within the framework of a broader EU biodiversity policy, the Nature Directives remain highly relevant and are fit for purpose, but full achievement of their objectives will depend on substantial improvement in their implementation.

The latest assessment of the state of nature by the European Environment Agency² showed that despite some encouraging developments, only 15 % of habitats and around 27 % of species protected under EU legislation indicate a good conservation status. An EU-wide assessment of ecosystems found that, overall, the condition of ecosystems in the EU is unfavourable. With additional data and reports we have at our disposal, such as the Global Assessment Report on Biodiversity and Ecosystem Services by IPBES (2019)³, or the Sixth Assessment Report by IPCC⁴, the evidence is clear that **the progress achieved in order to halt biodiversity loss has been limited and nature is declining globally at a rate unprecedented in human history, whilst diverse, self-sustaining ecosystems provide multiple contributions to people, essential for climate change adaptation and mitigation.**

¹ Commission staff working document – Executive summary of the Fitness Check of the EU Nature Legislation (Birds and Habitats Directives) (SWD(2016) 473 final).

² State of nature in the EU - Results from reporting under the nature directives 2013-2018, European Environment Agency, 2020.

³ IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

⁴ IPCC (2022): Climate Change 2022: Impacts, Adaptation and Vulnerability | Climate Change 2022: Impacts, Adaptation and Vulnerability (ipcc.ch).

Focusing on protecting biodiversity is crucial and results accomplished in this field have to be developed further and refined. However, the world and the European Union need to **step up and go beyond protected areas and address landscape in a broader sense, if we indeed intend to put biodiversity on the path to recovery.**

Urgent need for action acknowledged across the board

In light of the unsatisfactory situation, **the European Commission has adopted the new EU Biodiversity Strategy for 2030** in 2020 (the ‘Strategy’) as one of the central elements of the Green Deal and committed to put forward a **proposal for legally binding EU nature restoration targets** to restore degraded ecosystems.

In October 2020, **the Council**, being fully aware that biodiversity loss and ecosystem degradation and loss of ecosystem services pose direct and existential threats to human life and wellbeing, in its Conclusions⁵ welcomed the Strategy and acknowledged the fact that the conservation, restoration and sustainable use of biodiversity and ecosystems have potential direct and indirect economic benefits for most sectors of the economy and that all businesses depend on natural capital assets and ecosystem services either directly or indirectly. It also recognized that while legal frameworks, strategies and action plans at EU and national levels are in place to protect biodiversity and nature and to restore degraded habitats and species populations, we need **to step up the protection and restoration of nature**. In relation to the restoration of ecosystems, **the Council reaffirmed that more ambition on nature restoration is needed, including a need for measures to protect and restore biodiversity beyond protected areas**. The Conclusions also recognized the important link between biodiversity loss and climate change as well as their respective solutions.

⁵ Conclusions on Biodiversity - the need for urgent action - Council conclusions (11829/20) of 16 October 2020.

In its resolution of June 2021⁶, the European parliament also welcomed the new EU Biodiversity Strategy for 2030 and its level of ambition and stressed that the Strategy needs to fully deliver on its targets. In order to achieve that, the resolution **called for measures to address biodiversity loss outside protected areas**. The Commission's commitment to draw up a legislative proposal on nature restoration, including the setting of binding restoration targets, was strongly welcomed, and the **fact that after restoration, no ecosystem degradation should be allowed, was stressed**.

Taking on a challenge to lead by example

On 22 June 2022, the Proposal for a Regulation on nature restoration ('Proposal') was adopted by the Commission.

The Proposal sets out an overarching objective: **to contribute to the continuous, long-term and sustained recovery of biodiverse and resilient nature across the EU's land and sea areas by restoring ecosystems** and to contribute to achieving the Union's climate mitigation and climate adaptation objectives and meet its international commitments.

To achieve this objective, the Proposal sets **multiple binding restoration targets and obligations across a broad range of ecosystems** and paves the way for a broad range of ecosystems in the EU to be restored and maintained by 2050, with measurable results by 2030 and 2040. The proposal is further supported by an implementation framework to translate the objectives into action, by preparing and carrying out National Restoration Plans.

The Proposal also enables the EU to demonstrate global leadership in protecting nature, in particular with a view to the 15th Conference of the Parties of the Convention on Biological Diversity held in Montreal, during the Czech Presidency of the Council of the EU, where 196 parties to the Convention, including the EU and its Member States, are expected to agree on a **post-2020 global biodiversity framework**.

⁶ European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives (2020/2273(INI)).

The EU intends to push for global 2030 targets in line with EU commitments set out in Strategy and for a much stronger implementation, monitoring and review process. In its Conclusions of October 2022⁷, **the Council stressed that a target on stepping up action for the effective restoration of degraded ecosystems needs to be included in the post-2020 global biodiversity framework.**

Reflecting on the need for a clear common nature restoration framework

Under the Czech Presidency, the Proposal was discussed at ten meetings of the **Working Party on the Environment (WPE)** where all Member States expressed general support for the objectives of the text. Delegations acknowledge that nature restoration is essential, particularly in the context of the urgent need to adapt to and mitigate climate change.

The discussions fostered by the Czech Presidency enabled a detailed examination of the text and allowed Member States to express their views on all the articles. A number of important challenges emerged from the initial exchanges. In general, Member States call for maintaining a **strong coherence with the current EU environmental legal framework** and for providing a more explicit link to that framework in specific provisions of the Proposal. Member States also stressed that **flexibility will be necessary in order for them to be able to reflect specific national characteristics**. It was pointed out that the implementation will require **substantial human as well as financial resources** that are currently not available or would have to be substantially adjusted. It was also clear that definitions are of great importance to Member States as effective and harmonised implementation of the text requires a **common understanding of its provisions**. Both horizontal and technical issues were discussed at the Working Party level with some of them resolved, and, due to a complexity of the Proposal, major part left for further discussion.

⁷ Convention on Biological Diversity (CBD): Fifteenth meeting of the Conference of the Parties (COP 15) to the CBD; Tenth meeting of the Conference of the Parties to the CBD serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP 10); Fourth meeting of the Conference of the Parties to the CBD serving as the Meeting of the Parties to the Nagoya Protocol on Access and Benefit Sharing (COP-MOP 4); (Montreal, Canada, 7–19 December 2022) - Council conclusions (13975/22) of 24 October 2022.

Based on the discussions held and comments sent by delegations, the Presidency prepared a **compromise text on Articles 1-10**⁸ which was discussed at the WPE meetings on 24 November and 9 December 2022. For many of its elements, the revised text was met with general appreciation and provided a good way forward, whilst also revealing a number of concerns that need to be addressed conscientiously in future negotiations. It was also clear that some issues would benefit from political guidance. Therefore, the Presidency has identified two topics to be addressed by the Environment Council on 20 December 2022 in order to provide guidance for the future work of the WPE. The starting points of the discussion are described below.

Working together to meet the ambition

It is an important signal that a lot of delegations have not challenged the overall level of ambition of the Proposal. At the same time, technical discussions indicated that Member States are not unanimous as regards their views on this matter. Some of the targets and obligations set out in a Proposal, particularly in Articles 4-10, are considered too ambitious by some Member States, mainly because the present institutional and financial framework (including human resources capacity with appropriate skills and knowledge) is not sufficiently adapted. In addition, the implementation of the Proposal would not be possible within the proposed timeframe, given the need for close cooperation and coordinated actions across a number of key sectors (e.g. forestry, water management, agriculture, game management, spatial and urban development and planning).

Member States also pointed out that the improvement of ecosystems or related indicators will require a **longer time scale**, sometimes related to the need to obtain adequate scientific knowledge. Meeting the proposed targets might also be difficult due to natural conditions (namely climate change, spreading of invasive alien species) or other overarching public interests.

⁸ Presidency compromise text on Articles 1-10 – ST 14884/22.

It is important to keep in mind that **the Proposal is based on the aims of the Strategy, endorsed by both the Council and the European Parliament**, and to take into account the urgent need to restore ecosystems, improve their condition and mitigate the impacts of climate change. Despite all the efforts by Member States, biodiversity is further declining. Such decline could turn out to be irreversible and lead to ecosystem collapse. The need to effectively address, without delay, current unsatisfactory ecosystems condition is a cornerstone of the Proposal. Lowering its ambitions might bring even more **uncertainty regarding the efficiency of our joint efforts to prevent further biodiversity decline** and compromise them, as adopted measures would not necessarily lead to the desired outcome in the form of improved ecosystem health and associated ecosystem services.

As mainly some of the outcome-based obligations in the Proposal might indeed be challenging to achieve, therefore, the National Restoration Plans should provide the necessary room for **flexibility at national level**. The targets and obligations proposed generally allow to take into account specific conditions present in Member States (through e. g. setting satisfactory levels of indicators, determining favourable reference area for habitat types or sufficient quality and quantity of habitats and species) and for building upon conservation status assessments conducted under the Nature Directives. Making full use of this flexibility can, in the light of the urgency to act, pave the way forward.

Making sure that the investments pay off

The Proposal lays down the obligation for the Member States to 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, and areas, where the habitat types occur, **do not deteriorate**. Such obligation aims to ensure that an **effective protection is in place where the Nature Directives regime – improving or maintaining the conservation status – applies**, as well as to ensure long-lasting effects of restoration measures and that **where resources were invested in these measures, these resources are not devalued**.

The proposed concept is **demanding in terms of monitoring and assessment as well as in relation to the extensive management measures that would need to be put in place in all areas where habitat types or habitats of species require maintenance to ensure their long-term existence in a good condition**. The cost of a strict non-deterioration requirement outside Natura 2000 is challenging to assess, but is expected to be substantial, both when it comes to implementing this requirement (handling land rights and implementing the administrative and legal system required) as well as to its fulfilment in practice.

It is however clear that **the obligation has high relevance to the scope of the Proposal as well as a great potential to fundamentally contribute to the aims of the Nature Directives in relation to reaching or maintaining the favourable conservation status of habitat types and habitats of species in question on a nation-wide scale**. The assessment of the condition of those phenomena is already done on a national level under the current legal framework, thus efforts connected with applying the non-deterioration principle would be reflected positively in this area. Evidence has shown that even if the Natura 2000 network is an important tool contributing to favourable conservation status, it is by far not sufficient to achieve the targets set out in the Strategy.

The Proposal, however, foresees **possible means of derogations to the non-deterioration principle**. The Presidency has also in its compromise text proposed **a shift from an outcome-based to an effort-based obligation**, focusing on measures to be put in place to prevent non-deterioration. An alternative in the form of “no net deterioration” has also been put forward during the discussions. As many Member States call for the alignment of the Proposal with the current EU acquis in general, this important synergy with the Nature Directives should not be omitted. A possibility of different wording or, if needed, clarification of derogation possibilities, should therefore be the focus of further discussion at technical level.

In order to take the negotiations forward, ministers are invited to exchange views on the following questions:

1. *With a view to the acknowledged urgency to tackle the ever-present biodiversity crisis, but also to help address climate change and its impact on society and the economy, do you consider the ambition of the Proposal and the proposed timeframe adequate to address this twin challenge?*
2. *Bearing in mind the overall synergy of the “non-deterioration” principle with the Nature Directives, do you see it as an appropriate solution to ensure the long-term environmental and socio-economic benefits of healthy ecosystems and sustainability of invested resources?*

Speaking time: 3 minutes per Member State
