

Marie Müller - 1 December 2023

## Nature Restoration Law: A Review of the Council's General Approach and of What Remains of the Commission's Ambitious Proposal

### Introduction

Today, over 80% of the European Union's natural habitats are in bad or poor shape<sup>1</sup>. One of the key drivers for such a great loss of biodiversity is climate change. But unfortunately, even if scientists provide clear and alarming scientific evidence that climate change is linked to human activities, warning against the dramatic consequences and irreparable damage caused by political inaction<sup>2</sup>, there has, as yet, been no regulation put in place strong enough to solve the dramatic decline of ecological diversity. While previous attempts by the EU to halt biodiversity loss have been insufficient, the Nature Restoration Law is taking one step further, calling for the active restoration of degraded ecosystems.

On 22 June 2022 the EU proposed a law dedicated to reversing Europe's fast-paced biodiversity loss by setting out legally binding restoration commitments based on clear targets, defined for specific types of ecosystems and annex-based regimes, to be complied with by all EU national governments. The EU Nature Restoration Law was announced in the Biodiversity Strategy targeted for 2030<sup>3</sup>, one of many puzzle pieces contributing to the Green Deal<sup>4</sup>. The overall objective set by this proposal is 'to contribute towards the continuous, long-term and sustained recovery of the biodiversity and resilience of nature across the Union's land and sea areas through the restoration of ecosystems, achieving the Union's overarching objectives concerning climate change mitigation and climate change adaptation; meeting the Union's international commitments'.<sup>5</sup> By 2050, the Commission proposes to ensure the adoption of restoration measures in all endangered ecosystems and at least 20% of them by 2030. Other targets include reversing the decline of pollinators, restoring urban ecosystems and achieving no net loss of green urban spaces by 2030. The new law would also have

restoration targets for marine ecosystems, forests, rivers and the agricultural sector<sup>6</sup>.

### Opposition to the Law

Since the proposal for this law was published, it has generated a lot of debate, discussion and reaction, not always in the best interests of the purpose of this law. This is not only due its far-reaching scope, but also to the impact it will have, if successfully voted for and implemented, in very different sectors including the industrial sector, urban planning, agriculture, forest management, fisheries and many others.

One difficulty the EU faces in every field, but of particular importance in this proposed legislation, is to find a balance between calling for ambitious policies, while still giving enough freedom to each government to implement those targets with specific measures on a national level. The heterogeneity, in terms of structure and political or financial assets, throughout the EU is a major challenge, but this should not prevent the introduction of legislation which sets out to be both realistic and ambitious enough to ensure a meaningful impact. National restoration plans aim to close this gap by delivering guidance and assuring consistency in each Member State.

Northern countries in particular have expressed their discontentment in regard to the EU's proposal for nature restoration. As Sweden, Finland and other Scandinavian countries have a large forest industry which represents a significant part of their national economy, they are concerned that the law would have a negative impact on job opportunities and economic development. The voices behind the law emphasise the importance of healthy ecosystems, especially for forests to build resilience and enable them to flourish in future years. Other voices, such as Marta Múgica, a coordinator for tree planting action

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at the Life Terra Foundation, argue that the law would bring forward new ‘nature-friendly’ jobs, due to the halt in land deterioration<sup>7</sup>, thus contradicting opposing arguments in this context.

The Nature Restoration Law has also generated concerns on regional and municipal levels. The Helsinki-Uusimaa Region published a joint statement in the name of different cities in that area. The statement refers to Article 6 of the law and criticises the obligation to restore and further develop urban spaces, while not taking into account the present status of each city. They argue that the proposal would obligate all municipalities to put in place restoration measures with the goal of accumulating more green urban space, but without recognising the complexity of ecosystems. Those concerned municipalities which already have a high number of green urban spaces, like Helsinki, which, according to 2022 figures, has a total tree cover of 44% and 5% urban green space<sup>8</sup>. These cities would like to see more light and shade differentiation in the legislation, allowing more flexibility for each municipality to comply with the incoming regulation. Eurocities and the Council of European Municipalities and Regions have asked for the exact same change, stating that ‘this one-size-fits-all approach is inappropriate, given the varying existing conditions of cities.’<sup>9</sup>

### What is the current situation?

The European Parliament voted on 11 July 2023 in favor of the Nature Restoration Law, even though the vote was very close, with 330 votes in favor and 300 votes against<sup>10</sup>. The Parliament’s position towards the Nature Restoration Law has already been made public and is weaker than that of the Council, since, for example, whole passages and chapters relating to the commitments on agricultural restoration have been deleted completely.

On 20 June 2023, almost one year after its publication, the Council reached an agreement, also known as the general approach, for the Nature Restoration Law. The general approach is often used to facilitate the negotiations between the Parliament and the Council<sup>11</sup>.

The trilogue, a non-public negotiation between the Commission, Council and Parliament to find a common position, met on 5 October, while the second session was scheduled for 16 November 2023. Even

earlier, on 9 November 2023 the Parliament and the Council jointly agreed on a provisional common position for the Nature Restoration Law.

### Will the law still be able to meet expectations?

The general approach allows for a first impression of the Council’s position before the Parliament’s first reading<sup>12</sup>. Compared to the initial version of the law from the Commission, it seems that the Council is aiming for a less progressive and more comfortable version of the Nature Restoration Law.

In some paragraphs of the Council’s revisited proposal, the word “degraded” has been replaced by the wording “reduced”. One example of this is paragraph 44 on the coverage of green urban spaces, where actions to prevent further degradation have been exchanged for actions to avoid their reduction in terms of covered surfaces. This is clearly the first sign of a fallback towards less progressive attempts to reverse biodiversity loss.

Up to now, the monitoring of species has been neglected, restricting experts’ abilities to determine their status and make elaborate, precise conservation plans<sup>13</sup>. This challenge has been acknowledged not only by the experts, but by the Member States too, resulting in a call for the deadline to be rescheduled for quantitative restoration measures. This means Member States will have a time-allowance until 2030 to determine the status of 90% of the terrestrial and only 50% of marine habitats in their national territories. An exemption has been made for soft sediment<sup>14</sup>.

For the first time, urban ecosystems fall within the scope of the law and could be directly addressed, as the law also covers cities, whose urban ecosystems are often neglected. The importance of urban ecosystems relies less on their size and more on their impact on the population’s health while living in cities. According to the European Commission, 32.7% of Europe’s population lives in urban agglomeration<sup>15</sup>. The Council’s position has taken into account the propositions of the joint declaration of the Helsinki-Uusimaa Region. Even though the total amount of green infrastructure in each city will have to remain at the very least at its present stage, or else increase, cities that reach a ‘satisfactory level’, and those with a total coverage of 45% of green urban spaces, will be excluded from this obligation. Furthermore, incorpo-

rating green infrastructure and nature-based solutions into urban planning is no longer mentioned in the general approach.

One of the most innovative tools introduced within the Nature Restoration Law is the National Restoration Plan (NRP)<sup>17</sup>. Each Member State will have to submit draft NRPs to the Commission in order to show how they plan to reach their targets. These NRPs will then be reviewed and sent back with comments and suggestions. Once the Member States and the Commission agree on the NRPs, the Member States will have to implement them. This process should help and guide the Member States to strive for more ambition and commitment, and at the same time, it allows the Commission to have a better overview of all Member States, thus avoiding any misalignment. This is of immense importance, as biodiversity goes beyond national borders.

While the previous proposal had asked each Member State to submit final plans leading up to 2050, the Council decided to split this period into 3 stages. This means that initially only plans up until 2032 will be necessary, while for the other two time periods up to 2042 and 2050, Member States will only have to submit a strategic overview<sup>18</sup>. The concrete plans for the second and third periods will have to be submitted later, which will allow for recent changes to be taken into account.

The Council decided to allow derogation in specific cases, possibly as a reaction to current crises faced by the EU, like the Russian assault on Ukraine. The Council added two supplementary chapters about defence and energy. The first supplementary chapter is about renewable energy. The position proposes an exemption to the requirements of the Nature Restoration Law when a Member State anticipates causing some deterioration to an area for reasons of public interest related to the implementation of the infrastructure for renewable energy, even if less damaging alternatives for the concerned ecosystems would be available<sup>19</sup>. The Council argues that the production of energy from renewable sources is superior to the interests' pursued by the Nature Restoration Law. The second added chapter, and the possibility of exemption, concerns national security and defence. Measures sustaining security issues will have priority over restoration measures<sup>20</sup>, again argued on the basis of the public interest.

Finally, the Commission will be asked by the Council to closely report on the availability of EU funds, estimated costs for implementation and missing financial resources for the incoming legislation. The idea would be to provide the Council with an initial overview, after one year, in the form of a report<sup>21</sup>, containing an estimation of the financial assets required that is as precise as possible by consulting Member States and other important stakeholders.

## Conclusion

The Nature Restoration Law still has many challenges to overcome before the much-awaited legislation can finally be implemented. The decision from the Parliament and the Council to pursue the implementation of the Nature Restoration Law is a good step in the right direction for European ecosystems.

The EU is one very important step closer towards more nature and biodiversity-oriented policymaking, and if successfully adopted, the EU will be a front leader for nature restoration.

It should not be forgotten what the driving forces behind the Nature Restoration Law are. This proposal has not been initiated to make Europe look nicer or more aesthetically pleasing. This law addresses fundamental issues and the catastrophic status of Europe's ecosystem. Biodiversity loss, climate change and desertification are very closely interlinked with food security and human health. Further neglecting the necessity for drastic changes in the way Europe lives, consumes and finally destroys its natural resources, will lead to unforgivable consequences for later generations.

To conclude, the Nature Restoration Law remains on a good track towards its adoption, but there is a high risk that it might be further watered down on its journey. Already at this point, the law will only target at minimum 90% of all habitats in poor conditions by 2050, and not all as previously thought. It remains unclear how far ambitions have been reduced, as the provisional agreement has not been made public yet. The risk that the law might not achieve its initial purpose and turn out to be an empty shell with lost promises still remains. As the text will be legally binding, the Parliament and the Council have critical roles to play and are expected to assume their responsibilities towards the Green Deal objectives. Moreover, experts recognise the major opportunities

of the proposed legislation and also endeavour to remind us that biodiversity loss is a path with no return<sup>22</sup>.

The next step for the law is the submission of the provisional agreement to the Coreper, as well as to the Environment Committee of the Parliament. There-

after, the regulation will, once more, have to be adopted by the Council and the Parliament before it finally comes into force<sup>23</sup>.

Which path the EU chooses in the end, remains unknown, only time will tell.

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