October 2020

Restoring EU's nature

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The above mentioned NGO's have agreed the following position on the nature restoration law.

Introduction

Habitats across Europe are not in good health and ecosystem degradation is a major issue across the EU.[1] Habitat fragmentation, loss and degradation as a result of land and sea use change, through e.g. agricultural intensification, grey infrastructure developments, overfishing or intensified forestry, is widespread.[2] Further major drivers of biodiversity loss, such as the over-exploitation of natural resources both on land and at sea, the effects of the climate crisis, pollution and invasive alien species have also contributed to the decline in quantity and quality of important ecosystems, as well as to the decline in nature's contribution to people across Europe.[3]

As a result of this degradation, while still much-needed, conservation and protection of remaining ecosystems can no longer halt biodiversity loss on their own. We need to take action to bring back 'high-quality' nature by restoring degraded ecosystems to enable nature to recover and to improve the health and resilience of our ecosystems in order to turn the tide against biodiversity loss.

Yet, progress on ecosystem restoration has been insufficient in this past decade. The global biodiversity targets for 2020, the Aichi Targets,[4] and the targets of the EU's Biodiversity Strategy for 2020[5] both included a commitment to restore 15% of degraded ecosystems, however, this has been missed by far.[6]

Land degradation, through e.g. the drying and burning of peatlands or deforestation, substantially contributes to the climate crisis, being responsible for 3.6-4.4 billion tons of CO2 globally between 2000 and 2009.[7] The IPCC further estimates that 23% of total global anthropogenic greenhouse gas emissions between 2007 and 2016 derived from agriculture, forestry and other land use.[8]

Restoration activities, on the other hand, hold significant potential for climate mitigation and adaptation, as "actions to avoid, reduce and reverse land degradation can provide more than one third of the most cost-effective climate mitigation needed to keep global warming under 2°C by 2030".[9] Restoring ecosystems such as peatlands, floodplains, coastal areas, or

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[1] EEA, 'The European Environment - state and outlook for 2020' (2019), https://www.eea.europa.eu/publications/soer-2020; https://www.eea.europa.eu/themes/biodiversity/state-of-nature-in-the-eu/article-17-national-summary-dashboards/conservation-status-and-trends.

[2] IPBES, 'Regional Assessment Report on Biodiversity and Ecosystem Services for Europe and Central Asia' (2018) https://ipbes.net/assessment-reports/eca; https://www.eea.europa.eu/soer/2015/europe/biodiversity

[3] IPBES, 'Global Assessment Report on Biodiversity and Ecosystem Services' (2019), https://ipbes.net/global-assessment; EEA, 'The European Environment - state and outlook for 2020' (2019), https://www.eea.europa.eu/publications/soer-2020.

[4] https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.pdf

[5] https://ec.europa.eu/environment/nature/biodiversity/strategy_2020/index_en.htm

[6] Cf. mid-term assessment https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0478; IPBES, 'Global Assessment Report on Biodiversity and Ecosystem Services' (2019), https://ipbes.net/global-assessment; CBD, Global Biodiversity Outlook 5 (2020), https://www.cbd.int/gbo5.

[7] IPBES, 'The IPBES assessment report on land degradation and restoration' (2018), https://ipbes.net/assessment-reports/ldr.

[8] IPCC, 'Climate Change and Land' (2020), https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf.

[9] IPBES, 'The IPBES assessment report on land degradation and restoration' (2018) https://ipbes.net/assessment-reports/ldr

upland forests can also provide solutions for climate adaptation by improving water retention, providing flood and drought protection, mitigate heat or provide protection from erosions and landslides.[10]

In addition to major biodiversity and climate mitigation and adaptation benefits, restoration activities also provide significant social and economic benefits such as sustainable jobs for local communities or recreation opportunities, and can contribute to our overall health and wellbeing, including by enhancing our resilience against future pandemics[11] and through the provision of vital ecosystem services.[12] The restoration law should lay the groundwork for activities developed in conjunction with local stakeholders to determine adequate interventions for each landscape and community. The legislation should take measures to avoid increasing pressure on local livelihoods and take into account existing social dynamics.

Economically, investments in restoration activities and in avoiding land degradation generally by far exceed the costs thereof.[13] Overall, there is thus a clear case for restoration activities from an ecological, climate, social and economic perspective.

Policy context

The EU's Biodiversity Strategy for 2030 includes a commitment that ''subject to an impact assessment, the Commission will put forward a proposal for legally binding EU nature restoration targets in 2021 to restore degraded ecosystems, in particular those with the most potential to capture and store carbon and to prevent and reduce the impact of natural disasters.''[14] The legally binding targets will require a new legal instrument, further referred to as 'restoration law', that presents a major opportunity for turning the tide against biodiversity loss while also contributing to climate mitigation and adaptation.

In this paper, the undersigning NGOs present recommendations on key elements of the restoration law, focusing on the objectives, targets, criteria, measures, governance and finance aspects of the new law. Before outlining our recommendations for the restoration law, three preliminary points must be stressed.

Firstly, learning from the failures of the previous restoration commitment in both the global Aichi targets and the EU's Biodiversity Strategy to 2020, **the new restoration law must be targeted and result in urgent large-scale restoration across the EU.** This is not only required by the urgency of the biodiversity crisis, but also demanded by the Biodiversity Strategy itself which stresses 'the need for urgent action'. Therefore, instead of starting a

[10] OECD, 'Nature-based solutions for adapting to water-related climate risks' (2020) OECD Environmental Policy Paper No.21, https://doi.org/10.1787/2257873d-en.
[11] UNEP, 'Preventing the next pandemic - Zoonotic diseases and how to break the chain of transmission' (2020), https://www.unenvironment.org/resources/report/preventing-future-zoonotic-disease-outbreaks-protecting-environment-animals-and; https://ipbes.net/covid19stimulus
[12] EEA, 'Healthy environment, healthy lives: how the environment influences health and well-being in Europe' (2020), https://www.eea.europa.eu/publications/healthy-environment-healthy-lives; IPBES, 'Global Assessment Report on Biodiversity and Ecosystem Services' (2019), https://ipbes.net/global-assessment.
[13] OECD, 'Biodiversity: Finance and the Economic and Business Case for Action' (2019), OECD Publishing https://doi.org/10.1787/a3147942-en; IPBES, 'The IPBES assessment report on land degradation and restoration' (2018) https://ipbes.net/assessment-reports/ldr.
[14] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590574123338&uri=CELEX:52020DC0380

lengthy debate on definitions, the new law should require concrete restoration actions and build as much as possible on existing definitions. The law should be compact, targeted and directly actionable in order to quickly lead to significant improvements in 15% of the EU's land and sea area, leading to 'high quality nature' with a significant positive impact on biodiversity.

Secondly, the new law should be additional to the relevant EU Directives so as to not undermine or duplicate existing EU nature and water protection obligations that include some restoration requirements. Art.6(1) of the Habitats Directive, for example, requires Member States to establish the necessary conservation measures and Art.6(2) demands Member States to avoid deterioration of natural habitat which can both also include restoration measures, depending on the needs of the site. Art.6(2) has been interpreted to include an obligation to "ensure that damaged habitats are allowed to recover."[15] Art.10 promotes improving the ecological coherence of the Natura 2000 network. Under Art. 4 of the Water Framework Directive "Member States shall protect, enhance and restore all bodies of water".

As a result, the legislation must explicitly go beyond what is already required by the Habitats Directive and other EU legislation (mainly Birds Directive, Water Framework Directive, Marine Strategies Framework Directive) to build upon the existing obligations. Therefore, a new restoration law cannot merely add a deadline to already existing and strong requirements in protected areas. Instead, the new law should add targeted and specific additional restoration requirements, both inside and outside of protected areas (including Natura 2000 areas), while the implementation and enforcement of existing legislation is improved simultaneously. In case of freshwater ecosystems, the restoration should *inter alia* target biodiversity-rich small water bodies which are currently not addressed by the Water Framework Directive.

Thirdly, the restoration law should create synergies between the biodiversity and climate crisis agenda by putting a specific focus on biodiverse ecosystems with significant carbon storage and sequestration potential, such as peatlands, floodplains, wetlands, old-growth forests, biodiversity rich grasslands, coastal areas or marine ecosystems. Nonetheless, the focus and primary objective of the new law should remain on tackling biodiversity loss. The new law should therefore also enable the restoration of biodiverse ecosystems with lower carbon storage potential given their important contributions to biodiversity and ecosystem resilience.

[15] Case C-117/00 *Commission v Ireland (Red Grouse)* [2002], para 31-33; cf. also Opinion AG Kokott, Case C-301/12 *Cascina Tre Pini,* para 50 (failure to fulfill Art.6(2) protection obligations "[...] does not warrant the withdrawal of protected status. Member States should rather take the necessary measures to restore the site.")

Main elements of the restoration law

Objectives

In line with the commitment in the EU's Biodiversity Strategy for 2030, the main objectives of the restoration law should be two-fold:

As the main objective, the law must contribute to halting and reversing biodiversity loss, resulting in the restoration of habitats, species and ecosystem functioning, connectivity and resilience at landscape level across the EU. In this respect, the restoration law must be complementary to and synergistic with the objectives of the Birds and Habitats Directives, the Water Framework Directive, the Floods Directive and the Marine Strategy Framework Directive, building on their objectives through ecological restoration that both reduces fragmentation and increases the resilience of Europe's biodiversity to the impacts of the climate crisis.

As the supportive objective, the restoration law should contribute to climate change mitigation and adaptation. By creating synergies and focusing on biodiverse ecosystems with potential for carbon storage and sequestration, restoration actions have the potential to provide major biodiversity benefits as well as contribute to climate mitigation and adaptation. Given that the biodiversity and climate crises are closely connected and equally urgent, we cannot waste time on single-purpose solutions such as grey infrastructure, but should use this new law as an opportunity to create multiple benefits through restoration as a key nature-based solution to the climate crisis.[16] Such a synergistic approach is also simply a matter of cost-effectiveness.

Recognising the main objectives of the law, the restoration targets should include ecosystems (with their characteristic species) that play an important role as nature-based solutions for climate change mitigation and adaptation: ecosystems with high carbon storage or absorption potential or those that contribute to mitigating floods, to wildfire prevention and to water retention. Examples of such ecosystems include: forests, peatlands, floodplains, free-flowing rivers, wetlands, biodiversity-rich grasslands, coastal areas and marine ecosystems such as seagrass meadows or biogenic reefs.

Targets

The legally binding EU targets for nature restoration on land and sea should be expressed in quantitative and similar terms for each Member State (i.e. without effort sharing).[17]

EU-wide, the targets should be to restore by 2030:

1. at least 650.000 km2 of land and at least 1.000.000 km2 of sea (15% of the EU land and sea area, sea area to be adapted to EU27 EEZ);

[16] Cf. V Kapos et al, 'The Role of the Natural Environment in Adaptation, Background Paper for the Global Commission on Adaptation' (2019), https://cdn.gca.org/assets/2019-12/RoleofNaturalEnvironmentinAdaptation_V2.pdf..

[17] It could be considered to include other targets from the 2030 Biodiversity Strategy, more specifically: the PA targets (PA and N2000 covering 30% of the EU land and sea, including ⅓ that is strictly protected) and the target for biodiversity on farmland (10% landscape elements on UAA).

2. at least 25.000 km of free flowing rivers, and to scale-up this ambition to achieve 15% of rivers restored to a free-flowing state in 2030 through *inter alia* barrier removal and floodplain restoration;
3. and should include a target for CO2 removal by sinks, in addition to the 2030 emissions reduction target.

These targets should be set against a 2020 baseline, meaning that restoration activities carried out as of 2020 should count towards these targets to avoid disincentivising timely action. A trajectory, with intermediate milestones to be reached for instance in 2025, should also be included.

Restoration measures and criteria

In addition to setting restoration targets, the new restoration law should also include criteria for restoration measures to be undertaken by the Member States in order to reach those targets. These should include the following five criteria:

Firstly, restoration measures should result in permanent change aiming to restore high quality and resilient nature, with a very significant improvement from the starting condition. This is important to avoid 'greenwashing' where incremental improvements (for instance a slightly better forest management regime or a small decrease of fishing intensity) would be labelled as restoration, but would not mean much in terms of attaining a change in state to 'high-quality nature'.

The end goal of 'high-quality nature' would require further elaboration and definitions, however this should not lead to a long scientific process that slows down the drafting and implementation of the restoration legislation but should follow a pragmatic approach that also explores the opportunities of building up on existing definitions of already existing key EU environmental legislation where possible and appropriate.

The definition of 'high-quality nature' should focus on enabling areas to reach their maximum potential for nature, the reversal of current degradation and the diversity and/or particularity of species. Further elements could be the contribution to connectivity, ecological coherence, and minimum interference of invasive alien species.

Further investigation is needed whether existing definitions in the Birds and Habitats Directives, the Water Framework Directive and the Marine Strategy Framework Directive could be built upon or referred to in order to evaluate the qualitative aspect of restoration action while minimising delays and bureaucracy. It would, however, be crucial to clearly differentiate the restoration legislation from the existing Directives. The aim would not be to expand the Natura 2000 network or the scope of the Directives, but to use similar indicators to assess the quality of an ecosystem, applying also to species or habitats not currently covered by the Directives, as the new restoration law should enable restoration activities both inside and outside Natura 2000 areas.

Secondly, restoration measures must result in significant management change (again to avoid greenwashing) **that puts nature on a path towards sustaining 'high quality'**. It is important that 'restoration' by 2030 refers to the changes in management and to the

implementation of restoration actions so that land and sea adapt towards high quality nature, not to the achievement of the end points which can take a much longer time.

Thirdly, action on restoration should not discriminate between restoration activities inside or outside already protected areas. After all, degraded ecosystems which have the "most potential to capture and store carbon and to prevent and reduce the impact of natural disasters" can be situated in both, and urgent action to restore ecosystems is needed across the EU. Therefore, restoration measures can take place both inside and outside Natura 2000 sites, under the condition that inside Natura 2000 sites, the restoration must (1) be additional to the management or restoration already legally required by the Birds and Habitats Directives, and (2) must not be undertaken in a way which undermines the species or habitats protection of the Directives or compromises the achievement of the environmental objectives in existing EU environmental law. This means that e.g. compensation measures under Art.6(4), the recovery of Natura 2000 habitats that degraded after the designation, or restoration strictly needed for the achievement of a site's favourable status should not qualify. In addition, restoration measures should not be used to offset ecosystem degradation or habitat loss taking place elsewhere.

Fourthly, restoration measures should also increase connectivity between habitats. Restoring a matrix of sustainably managed habitats, both inside and outside the Natura 2000 network, would increase its coherence and support the creation of a coherent trans-European protected area network. This buffering of Natura 2000 sites would further lead to increases in populations of pollinators and other mobile species and would improve ecosystem functionality, increase ecosystem resilience and contribute to climate change mitigation and adaptation.

Lastly, restoration measures should specifically encourage interventions that restore natural processes[18]. The restoration of natural processes allows for effective large-scale restoration of self-sustained and functional ecosystems through recovering natural ecological processes and the functions and services of wildlife. Critical components include restoring the ecological functions of wild species and their interactions, enhancing connectivity within and among habitats and promoting natural ecosystem dynamics and vegetation succession. When the synergies among these three components are improved, ecological restoration actions result in increased ecosystem resilience and higher biodiversity value.

In the restoration law, restoration measures should encompass both active and passive restoration actions. A non-exhaustive list of possible restoration actions could be included in an annex to the legislation that could include the following examples illustrating the targeted and limited scope of nature restoration to be promoted under the legislation.

Illustrative examples of restoration actions:

- Establishing no take zones to restore fish stocks and banning bottom-trawling to restore seabed communities

[18] in line with the policy paper recently published by WWF-Europe, Birdlife-Europe, EEB, Rewilding Europe and the Universities of Leipzig, Madrid and Vienna – Boosting Ecological Restoration for a Wilder Europe. See: https://www.rewildingeurope.com/wp-content/uploads/publications/boosting-ecological-restoration-for-a-wilder-Europe/index.html

- Oyster reef / Boulder reef restoration through the active provision of artificial substrates (on top of protective measures above)
- Restoration of seagrass meadows and kelp forests by seabottom stabilization and active propagation (on top of protective measures above)
- Restoration of marsh lands and dune systems by blocking drainage, relocating flood defences, land re-profiling, changing grazing regimes etc.
- Removing barriers from rivers to restore fish migration and natural river flows/free-flowing rivers
- Removing or blocking drainage to restore peatlands & wetlands
- Relocating or removing flood defences to restore floodplains
- Stopping logging and allowing forests mature towards becoming old-growth forests
- Restore conventionally managed forests to natural forests containing sufficient deadwood and structure to ensure ecological quality
- Restoration of native forest through assisted regeneration
- Restoring intensive grassland or arable land into biodiversity-rich grassland by removing nutrient rich soil, planting locally characteristic varieties and adopting biodiversity-focused grazing/mowing regimes
- Restoring abandoned or degraded semi natural grassland by removing invading scrub and reestablishing and managing pollinator-friendly plants, through biodiversity-focused grazing/mowing regimes or introduction of wild herbivores.
- Restore natural processes including natural disturbance such as burning or grazing of forests to reinstate trophic cascades of species including wild herbivores, carnivores and scavengers
- Restoring freshwater habitats such as ponds and streams through excavation, re-profiling, scrub or sediment removal, elimination of alien species etc.

Governance

The restoration law should require Member States to draft science-based national restoration plans. The plans should include clear quantitative targets in terms of locations, areas, types of ecosystems to be restored, financial tools to be used, requirements for active public participation, deadlines etc. The restoration plans will also need to show how the restoration measures will contribute to:

- Improving the connectivity of the Natura 2000 and wider protected area network
- Achieving the target of 10% of the EU's land and sea area to be strictly protected
- Supporting the objectives of the Birds and Habitats Directives, Water Framework Directive and Marine Strategy Framework Directive while being additional to existing legal requirements under these Directives. More stringent objectives should always apply.
- Supporting climate change adaptation and mitigation
- Contributing to the recovery of wild pollinators
- Ensuring the long-term protection and improvement of the restored habitats

Restoration plans should then be assessed by the Commission to ensure that the proposed measures contribute to the objectives of the restoration law and that the above criteria for restoration measures are met. The approval of the restoration plans should occur within clear deadlines. Restoration plans and drafts submitted to the Commission should be

made publicly available and the approval process must be carried out in a transparent manner.

The restoration law should explicitly include obligations for Member States to actively engage the public at the start of (i.e. scoping, planning and development) and throughout (i.e. implementation, monitoring and review) the restoration plan process. It should further establish a process through which stakeholders and local communities can submit 'complaints/queries' to the Commission relating to components of the national restoration plans or their implementation, while simultaneously granting affected stakeholders and civil society organisations legal standing to address these issues nationally, through any relevant judicial, semi-judicial and administrative means. This should build upon existing requirements for public participation, access to justice and access to information under the Aarhus Convention and the EU implementation thereof.

To be effective, the restoration law must contain clear deadlines regarding the establishment of the restoration plans and the implementation of all restoration measures. The law must further provide deadlines for the approval of the plans by the Commission and for the involvement of and consultation with the public, interested stakeholders and scientific experts. Monitoring of restoration measures, biodiversity outcomes and progress to targets, through standardised, and frequent national reports will be key.

The restoration law further needs to include safeguards to ensure the restoration and protection of the restored habitats is permanent.

Funding

The new law should create an EU obligation to co-fund effective restoration similar to Art.8 of the Habitats Directive, as a way to facilitate the use of existing EU funds in the short term and the potential creation of a dedicated EU restoration fund (or facility within some other fund) in the future MFF.

The legislation should also require Member States to match their restoration plans with an investment plan from both EU, national and private funding sources. Where relevant, the restoration plans must also be synchronised with other planning tools such as Prioritised Action Frameworks, CAP Strategic Plans, River Basin and Flood Risk Management Plans.

Legal form

We have a 10 year window of opportunity to curb the negative trends of biodiversity loss and climate change. **It is imperative that the new legislation is adopted and implemented at speed and is both effective and enforceable**. We appreciate that there are advantages and disadvantages to the different legal forms available and consider that the most appropriate legal form in this case should be selected on the basis of the above criteria.