

Tilburg University

Legal assessment of the Proposal for an EU Nature Restoration Law

Cliquet, An; Aragao, Alexandra; Born, Charles-Hubert; Bouquelle, Farah; Ciscato, Eleonora; Decler, Kris; Dotinga, Harm; Fleurke, Floor; Leucci, Francesca; Mauerhofer, Volkel; Meertens, Matilde; Mendes, Ana; Queffelec, Betty; Reese, Moritz; Schoukens, Hendrik; Trouwborst, Arie; van Hoorick, Geert; Verschuuren, Jonathan

Publication date:
2023

Document Version
Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):

Cliquet, A., Aragao, A., Born, C-H., Bouquelle, F., Ciscato, E., Decler, K., Dotinga, H., Fleurke, F., Leucci, F., Mauerhofer, V., Meertens, M., Mendes, A., Queffelec, B., Reese, M., Schoukens, H., Trouwborst, A., van Hoorick, G., & Verschuuren, J. (2023). *Legal assessment of the Proposal for an EU Nature Restoration Law: Report by the Legal Working Group of the Society for Ecological Restoration Europe*. Society for Ecological Restoration.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.



**Legal assessment of the
Proposal for an EU Nature
Restoration Law**

17 April 2023

This assessment is based on 4 international workshops held by the **Legal Working Group of SER Europe (Society for Ecological Restoration – European chapter)** in December 2022, January 2023, March 2023 and April 2023. The Legal Working Group consists of legal experts on restoration from various EU countries, with support from scientific experts on restoration:

Prof. Dr. An Cliquet, Ghent University, Belgium¹

Prof. Dr. Alexandra Aragao, University of Coimbra, Portugal

Prof. Dr. Charles-Hubert Born, Université Catholique de Louvain (UCL), Belgium

Farah Bouquelle, European Forum for Judges for the Environment (EUFJE)

Eleonora Ciscato, PhD researcher, University of Milan, Italy

Kris Decler, senior scientist, Research Institute for Nature and Forest, Belgium

Harm Dotinga, Senior legal officer, Vogelbescherming Nederland

Dr. Floor Fleurke, Tilburg University, the Netherlands

Francesca Leucci, PhD researcher, University of Bologna, Italy

Prof Dr. Volker Mauerhofer, Mid Sweden University, Sweden

Matilde Meertens, PhD researcher, Ghent University, Belgium

Ana Mendes, Principal Researcher, MED Research Center, Universidade de Évora, Portugal

Prof. Dr. Betty Queffelec, Université de Bretagne-Occidentale, France

Dr. Moritz Reese, Helmholtz Centre for Environmental Research GmbH – UFZ (Leipzig)

Prof. Dr. Hendrik Schoukens, Ghent University, Belgium

Prof. Dr. Arie Trouwborst, Tilburg University, the Netherlands

Prof. Dr. Geert Van Hoorick, Ghent University, Belgium

Prof. Dr. Jonathan Verschuuren Tilburg University, the Netherlands

Citation: SERE Legal Working Group, *Legal assessment of the Proposal for an EU Nature Restoration Law*, April 2023.

¹ Corresponding author: An Cliquet, Department of European, Public and International Law, Ghent University, An.Cliquet@ugent.be

This assessment is based on the **Commission proposal for a Nature Restoration Law** (hereafter referred to as **NRL**) from 22 June 2022.² The Legal Working Group is aware that the proposal is currently being discussed by the Council and Parliament. It is therefore not an article-by-article assessment, but a more general assessment of several legal aspects of the law we consider to be particularly important. Our choice of the discussed aspects was based on ongoing political discussions on the law (e.g. in the EU parliament and Council). The note gives legal arguments why certain articles should remain in the law or should be amended or added to the law. Legal arguments include legal certainty for stakeholders, coherence with other EU legislation, legitimate expectations, accepted legal principles, etc. Where relevant, we include concrete suggestions for amending and improving the law proposal.

² European Commission, Proposal for a Regulation of the European Parliament and of the Council on nature restoration, COM(2022) 304 final, 2022/0195 (COD), Brussels, 22 June 2022, available at https://environment.ec.europa.eu/publications/nature-restoration-law_en

Contents

1. Choice of legal instrument	5
2. Overall goals.....	5
2.1. Clarification of overall goals.....	5
2.2. Restoration goals and offsetting.....	6
3. Restoration of terrestrial and marine ecosystems	6
3.1. Good condition	6
3.2. Deadlines for restoration measures for habitats of species.....	7
3.3. Restoration and non-deterioration outside Natura 2000.....	8
3.4. Exceptions for restoration obligations and non-deterioration clauses	10
3.5. Favourable reference area.....	10
3.6. Re-establishing missing species	11
3.7. Marine habitats.....	11
4. Restoration of agricultural ecosystems	12
5. National restoration plans	13
5.1. Science-based national restoration plans.....	13
5.2. Detailed contents of the national restoration plans.....	13
5.3. Quantification of areas to be restored, pressures to be removed and buffer zones	14
5.4. List of restoration measures in Annex VII	14
5.5. Commission guidance on restoration and further operationalisation of the law	15
5.6. Assessment of the national restoration plans	16
6. Public participation	16
7. Amendment of the annexes	17
8. Non-regression clause.....	18

1. Choice of legal instrument

The NRL takes the form of a **regulation**. The Commission can autonomously issue a regulation or a directive, bound by the principles of subsidiarity and proportionality (article 296, TFEU). The desired level of speediness can therefore be a deciding factor. A regulation is preferred because it ensures enough precision and fast implementation thanks to its direct application throughout the EU. For similar reasons, the European Commission has opted for the form of a Regulation for the first EU Climate Law.³ Similar to the EU Climate Law, the adoption of national restoration plans will leave sufficient room for discretion in the EU Member States.

2. Overall goals

2.1. Clarification of overall goals

Article 1, § 2 of the NRL proposal includes EU wide targets: *“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, by 2030, at least 20 % of the Union’s land and sea areas and, by 2050, all ecosystems in need of restoration.”*

The method to calculate the 20% target is not clear. Is it 20% of:

- all the land and sea areas,
- all *degraded* land and sea areas (and thus excluding areas in good conservation status)?

The first option is preferable.

There is no clarity on how the ecosystem specific targets will add up to the overall target, nor how the National Restoration Plans from the Member States will contribute to these overall targets.

The terminology ‘*effective*’ and ‘*area-based*’ leaves room for interpretation.

We suggest to:

- In article 1, § 2: make clear that the 20% goals apply to land areas **and** sea areas, by amending the text as:
*at least 20 % of the Union’s land and **at least 20% of the Union’s sea areas***
- In article 1, add a new paragraph 3 to clarify:
 - o How the percentages of 20% of restored land areas, respectively sea areas must be calculated.

³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, OJ L 243, 9 July 2021.

- How the targets for the different ecosystems in articles 4-10 should add up to the overall targets.
- In article 12, § 2 (national restoration plans): Member States must define in their national restoration plan how their restoration measures will add up to the overall targets from article 1.
- In article 2: add a definition of ‘area-based measures’ and of what is ‘effective’, that also covers necessary restoration measures inside and outside protected areas.

2.2. Restoration goals and offsetting

It is clear that restoration measures as **offsetting (compensation)**⁴ **cannot be considered under the restoration targets** of the NRL. If offsetting would be allowed under the restoration targets, the net gain of restoration cannot be met.

This is also in line with existing case law from the CJEU, where the Court has clearly stated that ‘double-dipping’ under article 6, Habitats Directive⁵ is not allowed.⁶

In practice this does not prevent the realization of large restoration projects, which include partly restoration obligations under the NRL, and partly restoration measures that are compensation measures (under article 6, § 4, Habitats Directive) as long as it is made clear that the compensation measures are **additional** to the restoration measures under the NRL. The setting up of clear-cut baselines are crucial in this regard, since they will render it easy to check which restoration actions are additional and which qualify as offsets.

3. Restoration of terrestrial and marine ecosystems

3.1. Good condition

For Annex I and Annex II habitats restoration measures are required until good condition is reached. ‘Good condition’ has been defined in article 3 (4) of the NRL.⁷ There is one element missing in this definition, which is ‘the absence of threats’. Adding this, would make the definition consistent with

⁴ Compensatory measures such as for example provided for in article 6, § 4, Habitats Directive.

⁵ Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *OJ L* 206, 22 July 1992.

⁶ Case Nitrogen deposition (C-293/17 and C-294/17).

⁷ ‘Good condition’ means a state where the key characteristics of an ecosystem, namely its physical, chemical, compositional, structural and functional state, and its landscape and seascape characteristics, reflect the high level of ecological integrity, stability and resilience necessary to ensure its long-term maintenance.

the SER Principles and standards on restoration (the key attributes of ecosystems include the absence of threats).⁸

Some actors would like to add other considerations than ecological characteristics in the definition of good condition (such as food security or agricultural productivity). There are several legal reasons not to do so:

- It is important to have clear definitions: including non-ecological requirements in the definition of an ecological concept would turn this definition into a balancing norm rather than a definition.
- The ultimate goal of this regulation is not the promotion of food security. There are other instruments for that within the EU
- Considerations such as food security are not mentioned in other secondary environmental legislation in the EU.
- It is legally inappropriate to include trade-offs in definitions, because it creates legal uncertainty.
- It is nonsensical to include every single option in the definition. This would make this definition not workable. Now the issue is food security, other times the issue is energy security, etc.

Aside from these legal arguments, there are no scientific arguments that demonstrate that ecological restoration would undermine food security, on the contrary: healthy, restored ecosystems provide food security.⁹

We suggest to:

- In article 3 (4): add 'the absence of threats'
- In article 3 (4): do not add other considerations.

3.2. Deadlines for restoration measures for habitats of species

Article 4, § 3 and article 5, § 3 of the NRL contain no deadlines or quantitative targets for the restoration for habitats of species, contrary to the deadlines and quantitative targets for restoration measures for habitats in article 4, § 1-2 and article 5, § 1-2.

We argue that the NRL should include deadlines when the targets should be reached at the latest (while the restoration duties of the Habitats Directive remain undiminished) and quantitative targets for habitats of species in art. 4, § 3 and 5, § 3. This is necessary for the coherence in the NRL. It is also necessary for legal clarity.

⁸ George Gann et al, *International Principles and Standards for the Practice of Ecological Restoration*, 2nd ed., Society for Ecological Restoration, 2019, 81.

⁹ See also page 1 of the Explanatory memorandum of the NRL; and Preamble, considerations 15 and 46.

We suggest to:

- In article 4, § 3 and article 5, § 3: add deadlines for compliance and quantitative targets for habitats of species.
- Or, if reaching a consensus on deadlines and quantitative targets seems too difficult or time consuming at this point, add 'without delay' in article 4, § 3 and article 5, § 3.

3.3. Restoration and non-deterioration outside Natura 2000

We consider the restoration obligations and non-deterioration clauses outside Natura 2000 very important in the NRL. We argue that this is consistent with other international and EU legal obligations, and that it is needed for legal clarity.

It is **consistent with and strengthens** other **international and EU obligations and commitments**, including:

- Article 8(f), Biodiversity Convention¹⁰;
- Article 2, Bern Convention¹¹;
- Article 6, § 2 of the Habitats Directive on the prohibition of deterioration for Natura 2000-sites;
- Article 3 and 10, Habitats Directive on connectivity;
- Article 12, Habitats Directive: prohibition of deterioration of breeding sites & resting places for Annex IV species, also outside Natura 2000;
- Article 3 and 13, Birds Directive¹²;
- Environmental Liability Directive¹³, which is also applicable outside Natura 2000;
- EIA-directive¹⁴: also applies outside Natura 2000; this includes a no net loss: there is a clear reference to non-degradation, prevent, mitigate and compensate even outside Natura 2000;
- LULUCF¹⁵ and Green Deal: this aims to keep CO2 in the ground: the best way to do so is through non-degradation.

It is also in line with **case law from the European Court of Justice**:

¹⁰ Convention on Biological Diversity, Rio de Janeiro, 5 June 1992.

¹¹ Convention on the Conservation of European Wildlife and Natural Habitat, Bern, 19 September 1979.

¹² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, *OJ L* 20, 26 January 2010.

¹³ Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedy of environmental damage, *OJ L* 143, 21 April 2004.

¹⁴ Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, *OJ L* 26, 13 December 2011.

¹⁵ Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU, *OJ L* 156, 19 June 2018.

According to the Court of Justice an appropriate assessment must catalogue the entirety of habitat types and species for which a site is protected, and identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.¹⁶

It is in line with **legitimate expectations and the obligations of article 191, TFEU**¹⁷:

- It is in line with the principle of cost-effectiveness. If it is allowed for habitats to deteriorate, more time will be needed (expensive/costly) for restoration measures afterwards (which would be contrary to the general goal of article 1 to restore all ecosystems by 2050). This is in line with CJEU case law on the designation of Natura 2000 sites: during the time that the Commission decided on including a Natura 2000 site in the community list, Member States had to take protection measures in the meantime¹⁸ and take all the measures necessary to avoid interventions which incur the risk of seriously compromising the ecological characteristics of the site.¹⁹
- It is in line with the prevention principle and precautionary principle.
- Restoration is a positive framework (net gain approach).

It is necessary for obtaining **environmental justice**:

- If we focus only on Natura 2000, what about people living in very degraded areas? We cannot disregard people living in a degraded environment because that restoration area is not a priority.

Conclusion:

It is consistent with existing international and European principles, legislation and case law, but existing non-deterioration clauses have not been sufficient to end further degradation, so the explicit non-deterioration clauses outside Natura 2000 in the NRL are essential.

We suggest to:

- Add a provision in the law that the Commission, within a binding deadline, should work out guidelines on how to operationalize the non-deterioration clause outside Natura 2000.

¹⁶ Case Holohan (C-461/17).

¹⁷ See article 191, § 1, TFEU: 'preserving, protecting and improving the quality of the environment'; § 2: 'It shall be based on the precautionary principle and on the principles that preventive action should be taken'; § 3: 'the potential benefits and costs of action or lack of action'.

¹⁸ Case Dragaggi (C-117/03).

¹⁹ Case Bund Naturschutz Bayern (C-244/05).

3.4. Exceptions for restoration obligations and non-deterioration clauses

Article 4, § 8-9 and article 5, § 8-9 of the NRL include several exceptions for not complying with the restoration and non-deterioration obligations.

The exceptions of article 4 and 5, § 8 are applicable **outside Natura 2000**. The exceptions are too broad and vague. They include the risk of loopholes and will give rise to more litigation. They need clarifications. The exception 'unavoidable habitat transformations which are directly caused by climate change' might lead to abuse for not fulfilling the restoration and non-deterioration obligations. The NRL has to make clear that the exception only applies where these habitat changes are not the result of action or inaction by Member States. In the exception of article 4 and 5, § 8, c, the requirement of compensation is missing.

The exceptions of article 4 and 5, § 9 apply **within Natura 2000**. These are in contradiction with the Habitats Directive. The exceptions of article 4 and 5, § 9 should be deleted in order to be in conformity with the Habitats Directive.

We suggest to:

- clarify the exceptions of article 4, § 8 and article 5, § 8.
- for article 4, § 8, b and article 5, § 8, b: add the following:
in so far as these transformations are not the result of action or inaction by the Member States.
- for article 4, § 8, c and article 5, § 8, c: add the following:
The Member State shall take all compensatory measures necessary to ensure that the restoration targets are met.
- delete the exceptions of article 4, § 9 and article 5, § 9.

3.5. Favourable reference area

Habitat types listed in Annex I and II of the NRL need to be restored in order to reach their favourable reference area (article 4, § 2 and article 5, § 2). The 'favourable reference area' is defined in article 3 (5). In the preparation of the national restoration plans the quantification of the area to be restored is based on the favourable reference area, *taking into account the documented losses over at least the last 70 years* (article 11, § 2, a, iii).

It is important to keep a specific time period in the NRL in order to guarantee that the favourable reference areas are sufficiently ambitious in order for ecosystems to sustainably achieve good condition. It is necessary for legal certainty to have a specific time period. However, it might not be

clear why a period of 70 years is proposed. It might also be useful in certain instances to use other reference points.

We suggest to:

- Explain in the preamble why a period of 70 years is put forward as a reference period (after WWII).
- Amend article 11, § 2, a, iii as follows: '*...documented losses of at least 70 years or any other science-based reference period*'.

3.6. Re-establishing missing species

The NRL does not mention the re-establishment (or replacement) of **missing native species** explicitly. We advise to include this explicitly, given the importance of (keystone) species for ecosystem restoration.

We suggest to:

- In Annex VII: add the following restoration measure:
Take measures aimed at the (re-)establishment of species that are important for the functioning and integrity of ecosystems. These may include, as appropriate, enabling natural range expansions and shifts where feasible, undertaking reintroductions of missing native species, and the ecological replacement of extinct native species (or of species that are extinct in their wild form) with suitable proxy species (or species forms), with due regard to best practice guidelines on conservation translocations.
- Alternatively, add a reference to the (re-)establishment of missing species in article 4 and 5 (similar to the explicit mentioning of connectivity in article 4, § 5 and article 5, § 5).

3.7. Marine habitats

Article 5 imposes restoration obligations for marine ecosystems for the marine habitat types mentioned in Annex II of the NRL. Although more habitat types have been added to this annex compared to the marine habitat types in Annex I of the Habitats Directive, there is still a concern that marine habitats, and especially deep-sea habitats, are underrepresented in the NRL.

According to the Impact Assessment Report of the NRL²⁰, the feasibility of restoration and effective tracking of results achieved by implementation of restoration measures decreases with depth. Therefore, soft sediments marine habitat types have been limited to habitats above 1000m depth.²¹

Although this is an understandable choice from a pragmatic point of view, it could be necessary to add more marine habitat types in Annex II. Article 19, § 2 enables the Commission to amend Annex II to adapt the list of habitat types and groups of habitat types. Taking into account the precautionary principle, as well as international and EU commitments, such as the OSPAR Convention²² and the Marine Strategy Directive²³, we recommend that the Commission examines the necessity to expand the marine habitat types in Annex II as soon as possible.

4. Restoration of agricultural ecosystems

Restoration measures for agricultural ecosystems are required both under article 4 and article 9 of the NRL. This raises questions on possible overlap and the risk of double counting. However, it is clear from the NRL and the explanatory memorandum that the NRL includes a hierarchy and that article 4 prevails. The measures in article 9 are *additional* to the measures mentioned in article 4 (see article 9, § 1: ‘in addition to’; see explanatory memorandum, page 13²⁴). However, there is some doubt whether this additionality also applies to the specific measures for agricultural ecosystems in article 9, § 2-4. It should be made clear that article 9, § 2-4 is also additional to article 4, so the hierarchy in the NRL is clear.

We suggest to:

- Amend article 9, § 1 as follows: ‘Member States shall put in place the restoration measures necessary to enhance biodiversity in agricultural ecosystems, in addition to the areas that are subject to restoration measures under Article 4(1), (2) and (3). *The measures mentioned under article 9 (2), (3) and (4) are additional to the measures under article 4 (1), (2) and (3).*’

²⁰ Commission Staff Working Document, *Impact Assessment Report. Annex VI-b, Accompanying the proposal for a Regulation of the European Parliament and of the Council on nature restoration*, Brussels, 22 June 2022, SWD(2022) 167 final, Part 5/12, 421.

²¹ “Assessing the condition of habitats in waters deeper than 1000m can be very costly, in particular for the vast area of sediment habitats below 1000m that make up about 80% of the total area of EU seabed. At the same time, anthropogenic pressures acting at those depths, such as illegal fishing (as regulated fishing is prohibited below 1000m depth), litter and energy/telecom transmission infrastructure, are expected to be very limited in spatial extent compared to the overall extent of sediment habitats below 1000m depth. Therefore, it would be appropriate to limit the application of restoration measures for sediment habitats to above 1000m depth, in order to better focus the efforts and resources.”

²² Convention on the Protection of the Marine Environment of the North-Eastern Atlantic, Paris, 22 September 1992.

²³ Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy, *OJ L 164*, 17 June 2008.

²⁴ “...further specific targets and obligations that will require additional restoration measures are laid down in Articles 6 to 10”.

5. National restoration plans

5.1. Science-based national restoration plans

National restoration plans (NRPs) should be science based (as mentioned in the preamble of the NRL). The NRL itself uses the term ‘scientific evidence’ (article 4, § 4; article 5, § 4; article 11, § 1). From a legal perspective, to prevent the misuse of ‘scientific evidence’, we advise to replace ‘scientific evidence’ with ‘best available scientific information’. This is in analogy with existing EU legislation (including article 191, § 3, TFEU (‘available scientific and technical data’); article 3 (10), Industrial Emissions Directive²⁵ (‘best available techniques’). The term ‘best available science’ is also consistently used in the case-law by the CJEU with respect to the Habitats Directive.

We suggest to:

- In article 4, § 4, 5, § 4, 11, § 1: replace ‘scientific evidence’ with ‘best available scientific information’.

5.2. Detailed contents of the national restoration plans

The NRL contains detailed provisions on both the preparation and the contents of the national restoration plans (articles 11-12). There are several legal arguments to keep this level of detail in the NRL, as well as the explicit alignment with other laws and policies.

- It is in conformity with general principles of good governance, including transparency, consistency and coherence.
- It is in line with the integration principle (cf. article 11, TFEU).
- It is needed for the objective of the harmonisation and to create a level- playing field.
- It is required to have enough details to have an effective regulation.
- It is in line with other legislation and policies which also contain detailed requirements (e.g., CAP).

We advocate for an even stronger alignment with other laws and policies (mainly, CAP and climate policies) by adding specific references to the latter in the NRL. Other policy areas should also not undermine the obligations under the NRL.

We suggest to:

- In article 11, § 5: put the alignment with climate policies and laws in stronger words than ‘identify synergies with’.

²⁵ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), *OJ L* 334, 17 December 2010.

- In article 11, § 5: include a specific reference to the LULUCF regulation.
- Article 11, § 7 (g): change to: *'effective area-based conservation measures under the Common Agricultural Policy and Common Fisheries policy that contribute to the targets of this regulation'*.
- Add a paragraph in article 11, which mentions that other laws and policies should not undermine the obligations under the NRL.

5.3. Quantification of areas to be restored, pressures to be removed and buffer zones

Article 12, § 2 (a) requires a quantification of individual areas to be restored in maps. Some Member States might argue that this is not possible for all restoration targets. There are legal arguments to support the quantification and mapping of areas to be restored.

- Quantification is useful for the implementation and enforcement of the NRL. Without quantification the Commission will not be able to assess the implementation and the level-playing field amongst Member States.
- Quantification provides input for the monitoring and reporting obligations.
- Mapping makes sure that the restoration measures are area-based.
- Mapping puts pressure for the adoption of effective measures and responsible targets

It would also be useful, for legal clarity, to quantify pressures that need to be removed in the restoration areas, as well as in buffer zones around restoration areas.

We suggest to:

- Add in article 12, §2 (a): the quantification of the area to be restored *'and identify the corresponding pressures that need to be removed'*...
- Add in article 12, § 2: the quantification of ecological appropriate buffer zones, where pressures need to be removed.

5.4. List of restoration measures in Annex VII

Annex VII of the NRL includes a non-exhaustive list of possible restoration measures. There are legal arguments to keep this list in Annex VII.

- It contributes to legal clarity.

- There is a similar approach in other laws (e.g., Annex VI B Water Framework Directive²⁶, Annex VIII, Air quality Directive²⁷).
- It is useful to improve the quality of the national restoration plans and can help avoid greenwashing.
- It can help provide legitimacy for certain restoration measures (e.g., deforestation for restoration purposes).

5.5. Commission guidance on restoration and further operationalisation of the law

We consider it essential that the Commission will develop guidance documents on restoration. This helps the implementation of the NRL in the Member States. These can be additional to existing international guidelines, such as the SER principles and standards²⁸ and the UN Decade principles.²⁹ A reference to these existing documents in the preamble of the NRL would be useful to guide Member States.

We suggest to include a provision establishing a time period within which the Commission must work out these guidelines. This is in line with guidelines for other EU legislation (e.g., guidance documents on article 6 of the Habitats Directive³⁰; European Habitats Manual³¹).

Guidelines on restoration can include:

- Guidance on the restoration targets, such as ‘good condition’ and ‘favourable reference area’.
- Guidance on best practices of restoration of different ecosystem types and species (groups) in terms of planning, implementation (quality and performance standards, techniques etc.), evaluation and maintenance.

Next to these non-binding guidelines, we suggest that the Commission is enabled through delegated acts to further operationalise the NRL.

We suggest to:

- In the preamble: include a reference to existing international guidelines on restoration (such as the SER principles and standards).
- Add a provision in article 11 on a deadline for the publication of guidance on restoration by the Commission.

²⁶ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, *OJ L 327*, 22 December 2000.

²⁷ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, *OJ L 152*, 11 June 2008.

²⁸ George Gann et al, *International Principles and Standards for the Practice of Ecological Restoration*, 2nd ed., Society for Ecological Restoration, 2019.

²⁹ Food and Agriculture Organization of the UN (FAO), International Union for Conservation of Nature Commission on Ecosystem Management (IUCN CEM) and Society for Ecological Restoration (SER), *Principles for Ecosystem Restoration to Guide the United Nations Decade 2021–2030*, FAO, 2021.

³⁰ https://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

³¹ https://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/Int_Manual_EU28.pdf

- Add a provision in Chapter V that enables the Commission, through delegated acts, to further operationalise the NRL.

5.6. Assessment of the national restoration plans

Article 14 of the NRL provides for an assessment of the national restoration plans by the Commission. In line with other policy areas, we advise that the Commission should ‘adopt’ the plans and not just assess them. There are several legal arguments to support this.

- This will strengthen the possibilities for enforcement of the NRL.
- It can avoid litigation against weak national restoration plans.
- This is in line with other legislation (e.g., article 5 of the Habitats Directive; article 4 of the Habitats Directive on the designation of Natura 2000 sites).
- It is appropriate that the Commission will approve the plans, as EU funding will be provided for restoration projects.

We suggest to:

- In article 14: replace ‘assessment’ by ‘adoption’ of the draft national restoration plans.

6. Public participation

The NRL contains some references to public participation in article 11, § 11 (on the preparation of national restoration plans) and article 12, § 2, n (on the content of the national restoration plans). Article 16 of the NRL is about access to justice. These provisions are in line with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.³²

We consider it useful to expand article 16 (access to justice) with the other two rights from the Aarhus Convention (right to information and right to participation). This is in line with what was already proposed in the draft report on the NRL from the rapporteur in the environmental committee of the European Parliament.³³ In a proposed new article 16a in the draft report, there are obligations for both public participation and spreading of information. In order to have meaningful participation, it is important that stakeholders and citizens are well-informed. We therefore consider the proposed article 16a, §

³² Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 July 1998.

³³ César Luena, *Draft report on the proposal for a regulation of the European Parliament and of the Council on nature restoration*, (COM(2022)0304 – C9-0208/2022 – 2022/0195(COD)), Committee on the Environment, Public Health and Food Safety, 5 December 2022.

4³⁴ on awareness raising and education of the uttermost importance. We suggest that a new article is included in the NRL, containing: firstly, obligations for awareness raising and education, secondly, obligations for setting up a multilevel dialogue³⁵; thirdly, obligations on information and participation.

In organizing public participation, it will be important to strike a right balance between the general and long-term interest (of nature restoration) and the own short-term interests of stakeholders. Participation should not lead to the undermining of the restoration targets. We therefor recommend that in the provisions on public participation, a qualification is added that participation should not undermine the scientific basis for the restoration measures and should not jeopardize the restoration targets of the NRL.

We suggest to:

- Expand the title of article 16 to 'Information, participation and access to justice.
- Include in article 16 the following elements:
 - o Obligations for awareness raising and education
 - o Obligations for setting up multilevel dialogues
 - o Obligations on rights to information and participation
- On public participation, add the following provision: *'the scientific basis for the restoration measures and the restoration targets of this Regulation do not fall within the scope of public participation'*.

7. Amendment of the annexes

Article 19 of the NRL enables the possibility for the Commission to amend the annexes to the NRL. In most paragraphs of article 19, there is mentioning that this should be done 'in accordance with the latest scientific evidence'. In line with our remark in 5.1. of this note, we suggest to replace 'scientific evidence' by 'best available scientific information'. In some paragraphs the reference to scientific information is missing. We suggest to add this in every paragraph of article 19.

We suggest to:

- In article 19, § 3, 4, 6 and 7: replace 'scientific evidence with 'best scientific information'.
- In article 19, § 1, 2 and 5: add: 'in accordance with the best scientific information'.

³⁴ "Member States shall promote campaigns to raise public awareness of the importance of biodiversity and nature restoration and engage with young people through programmes and concrete projects and through education and general information."

³⁵ Inspiration for a multilevel dialogue obligation can be found in article 11 of the Climate Governance Regulation (Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ L 328, 21 December 2018).

8. Non-regression clause

In order to clarify the relationship between the NRL and other EU legislation and to assure that the implementation of the NRL does not weaken the existing protection, we advocate for a ‘non-regression’ clause in the NRL. This is also in line with article 37 of the Charter of Fundamental Rights of the European Union, which imposes the improvement of the quality of the environment.³⁶

We particularly stress the importance that the NRL should not weaken the provisions of the Birds and Habitat Directives, the Water Framework Directive and the Marine Strategy Directive.

We suggest to:

- Add an article under Chapter VI of the NRL (final provisions) that states that in the implementation of this regulation Member States shall not weaken or reduce the existing levels of protection and in particular should be applied without prejudice to the Birds and Habitats Directives, the Water Framework Directive and Marine Strategy Directive.

³⁶ “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development” (article 37, Charter of Fundamental Rights of the European Union, OJ C 326, 26 October 2012).