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Legal assessment explaining why COPA*COGECA's objections against the Nature Restoration Act proposal are misleading

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Legal assessment explaining why COPA*COGECA's objections against the Nature Restoration Act proposal are misleading

In their letter of 26 June 2023 Copa*Cogeca asked the members of the European Parliament's Committee on Environment to reject the Nature Restoration Law proposal. They based their arguments for this rejection on what they considered as 'red line' issues, which makes the law proposal unacceptable to them.

As Legal Working Group (LWG) from SERE¹, we analysed these 'red line' issues and we concluded that **their red line objections against the Nature Restoration Law proposal cannot withstand legal scrutiny**. Many of their concerns are already present in the Commission proposal and are further addressed in the Swedish presidency compromise proposal. Further weakening of the Nature Restoration Law is against existing EU legislation.

Rejecting the law, as asked by Copa*Cogeca has **far-reaching negative legal consequences**:

- At EU and Member State level: it will lead to legal uncertainty, as long as nature remains in a bad conservation status, and no clear targets and deadlines on restoration are implemented.²
- At the global level: the EU will lose its leading role and credibility as environmental player in the international sphere. How to convince other nations, like Brazil, Congo, and Indonesia, to protect their vulnerable carbon sinks if Europe fails to restore just a small fraction of all the nature that has gone lost on our continent during the past centuries?

¹ The SERE Legal Working Group consists of experts on restoration law from different EU countries: Prof. Dr. Alexandra Aragao, University of Coimbra; Prof. Dr. Charles-Hubert Born, Université Catholique de Louvain (UCL); Farah Bouquelle, European Forum for Judges for the Environment (EUFJE); Eleonora Ciscato, University of Milan; Prof. Dr. An Cliquet, Ghent University*; Kris Decler, senior scientist, Research Institute for Nature and Forest; Harm Dotinga, Senior legal officer, Vogelbescherming Nederland; Dr. Floor Fleurke, Tilburg University; Francesca Leucci, University of Bologna; Prof. Dr. Volker Mauerhofer, Mid Sweden University; Matilde Meertens, Ghent University; Ana Mendes, Principal Researcher, MED Research Center, Universidade de Évora; Dr. Moritz Reese, Helmholtz Centre for Environmental Research GmbH – UFZ (Leipzig); Prof. Dr. Hendrik Schoukens, Ghent University; Prof. Dr. Arie Trouwborst, Tilburg University; Prof. Dr. Geert Van Hoorick, Ghent University; Prof. Dr. Jonathan Verschuuren, Tilburg University; *corresponding author: An.Cliquet@ugent.be

² See SERE Legal Working Group, The EU Nature Restoration Law: Providing legal certainty in tackling the biodiversity and climate crisis, May 2023, <https://chapter.ser.org/europe/>

- At the intergenerational level: how will we explain to future generations that the 9th legislature of the European Parliament (2019-2024) did not do everything in its power to prevent human catastrophes caused by biodiversity collapse and climate change?

As environmental lawyers, we call to the Members of the European Parliament to vote in favour of an **ambitious** Nature Restoration Law.

Voting in favour of an ambitious Nature Restoration Law is a matter of:

... **responsibility**³

... **precaution**⁴

... **honour**⁵

... **wisdom**⁶

... **care** for nature and for current and future generations.⁷

³ The vision of the Kunming-Montreal Global Biodiversity Framework is a world of living in harmony with nature where “by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people.”, <https://www.cbd.int/gbf/vision/>

⁴ “Earlier collapse of Anthropocene ecosystems driven by multiple faster and noisier drivers”, <https://www.nature.com/articles/s41893-023-01157-x>

⁵ The European Parliament “1. Declares a climate and environment emergency; calls on the Commission, the Member States and all global actors, and declares its own commitment, to urgently take the concrete action needed in order to fight and contain this threat before it is too late;

2. Urges the new Commission to fully assess the climate and environmental impact of all relevant legislative and budgetary proposals, and ensure that they are all fully aligned with the objective of limiting global warming to under 1,5 °C, and that they are not contributing to biodiversity loss; (...)

4. Urges the new Commission to address the inconsistencies of current Union policies on the climate and environment emergency, in particular through a far-reaching reform of its agricultural, trade, transport, energy and infrastructure investment policies”, https://www.europarl.europa.eu/doceo/document/TA-9-2019-0078_EN.html

⁶ “Mitigation options often have synergies with other aspects of sustainable development, but some options can also have trade-offs. There are potential synergies between sustainable development and, for instance, energy efficiency and renewable energy. Similarly, depending on the context, biological CDR methods like reforestation, improved forest management, soil carbon sequestration, peatland restoration and coastal blue carbon management can enhance biodiversity and ecosystem functions, employment and local livelihoods.”, IPCC, Climate change 2023. Synthesis Report, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf

⁷ “Recognizing that climate change is a major and growing driver of biodiversity loss and ecosystem degradation and that the conservation and sustainable use of biodiversity, and ecosystem functions and services, contribute significantly to climate change adaptation and mitigation, disaster risk reduction and food security and nutrition,” UNGA Seventy-fifth session Sustainable development: protection of global climate for present and future generations of humankind (A/C.2/75/L.26/Rev.1), <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N20/320/88/PDF/N2032088.pdf?OpenElement>

Legal assessment of Copa*Cogeca objections

1. **Copa*Cogeca Priority One – “non-deterioration should be confined only to those areas which are inside the Natura 2000 areas.”**

Non-Deterioration within Natura 2000 sites is already mandatory pursuant to Article 6(2) of the Habitats Directive. Non-deterioration is also implicitly applicable outside Natura 2000 sites because Member States have to reach a favourable conservation status for all habitats and species of Community interest on their whole national territory and not only in their Natura 2000 sites (article 2, Habitats Directive). For protected species, non-deterioration obligations already exist on the whole territory (Birds & Habitats Directives). Damage caused to habitats and species of Community interest must be repaired outside the Natura 2000 Network under the Environmental Liability Directive.

Thus, it would be against EU law to limit the territorial scope of the non-regression clause to Natura 2000 sites.

Aside from the question of compliance with existing EU directives, it does not make sense to allow key restoration areas to further deteriorate, since this would render the restoration process unnecessarily expensive and limit its effectiveness. Lastly, it is nonsensical to allow recently restored areas to be exposed to further deterioration as this would run counter to the basic rationale of any restoration legislation and violate basic principles of good economic governance.

2. **Copa*Cogeca Priority Two – “non-fulfilment criteria must be based in fact, rationality, and clearly defined flexibility that will allow Member States to adequately prepare for climate effects on their territory.”**

Copa*Cogeca asks to broaden the exceptions for fulfilling the restoration and non-deterioration obligations. However, the Nature Restoration Law is a balanced and groundbreaking law proposal to tackle the mutually related biodiversity and climate crisis and achieve the biodiversity and climate objectives for 2030 to 2050. It provides broad exceptions to the restoration and non-deterioration obligations that are clearly defined, sufficiently flexible and fully take into account the effects of climate change. The Nature Restoration Law will not threaten food security: on the contrary. Evidence from the JRC⁸ shows that restoring agro-ecosystems has positive impacts on food productivity in the long-term, and the restoration of nature acts as an insurance policy to ensure the EU’s long-term sustainability and resilience.⁹ Restoring pollinator populations is essential for the functioning of terrestrial ecosystems, human wellbeing, and food security.

⁸ Joint Research Centre.

⁹ Nature Restoration Law proposal, Explanatory Memorandum, page 1; see also: Liqueste, C., et al. Scientific evidence showing the impacts of nature restoration actions on food productivity, EUR 31137 EN, Publications Office of the European Union, Luxembourg, 2022, ISBN 978-92-76-54409-8, doi:10.2760/3032, JRC129725.

Furthermore, UNCCD¹⁰ reports that current agricultural practices are causing soils worldwide to be eroded up to 100 times faster than natural processes replenish them.¹¹ The UNCCD's goal of land degradation neutrality (LDN) can halt, and then reverse, this alarming picture of the future. Restoration of agricultural fields is key to promote food security and not the opposite.

Moreover, if the exceptions for the restoration and non-deterioration obligations are broadened, they will jeopardise the achievement of the overarching restoration targets and prevent or postpone the greening of the agricultural sector, which is also included in the current CAP 2023-2027. By opening up the flexibility grounds, the amended regulation would go against much of the rationale of the existing legislation, including the CAP.

As far as renewable energy is concerned, it needs to be highlighted that in the Nature Restoration Law proposal synergies with renewable energy are already included, and in the amended proposal of the Swedish Presidency this concern has even been addressed more extensively, in a comparable way as has been the case with the RepowerEU-initiatives.

3. Copa*Cogeca Priority Three – Funding: concrete, dedicated EU fund for Restoration; before any goals are set or made legally binding.

Funding is already provided (see dedicated funding in the Decision on the Multiannual Financial Framework; see also Legislative financial statement of the Nature Restoration Law proposal at 1.5.4.¹²). Member States will have to identify financial needs in their National Restoration Plans according to Article 12, § 2, l, of the Nature Restoration Law proposal.

4. Copa*Cogeca Priority Four – Impact Assessment: the impact assessment of the law proposal did not consider all aspects of sustainability.

This is a false argument for rejecting the Nature Restoration Law proposal because in fact a proper impact assessment has been conducted, similar to the assessment of other pieces of EU legislation. Cost-benefit ratios of restoration have been assessed in the impact assessment. Social and economic impacts have been addressed. For example the impact assessment states “The impact assessment report also addresses the issue of possible foregone incomes caused by restoration measures, by pointing out that they can already be compensated for totally or partially under EU funds such as the CAP, the EMFF, the Just Transition Fund and others, as well as under various national funds in most EU Member States.”¹³

¹⁰ United Nations Convention to combat desertification.

¹¹ <https://www.unccd.int/land-and-life/land-degradation-neutrality/overview>

¹² “The legislation will help mobilizing funding with a view to meeting the ambition of providing 7.5% of annual spending under the MFF to biodiversity objectives in the year 2024 and 10% of annual spending under the MFF to biodiversity objectives in 2026 and 2027, while considering the existing overlaps between climate and biodiversity goals.”

¹³ Commission Staff Working Document, Impact Assessment Report. Accompanying the proposal for a Regulation of the European Parliament and of the Council on nature restoration, Part 1/12, Brussels, 22

Copa*Cogeca does not mention that food security is directly dependent on a healthy natural environment and that degraded soils cannot deliver resilient food production.¹⁴ It is climate change and biodiversity loss that will have a negative impact on farming and forestry sectors.¹⁵ Restoration is part of the solution, not the problem.¹⁶

National Restoration Plans will need to address social justice issues and come up with solutions that facilitate the most impacted sector in the transition, which is explicitly mentioned in the law proposal.¹⁷

5. Copa*Cogeca Priority Five – “Article 9. “To this end, realistic and rational targets for restoration and rewetting of agriculturally drained organic soils must be made, and not an expectation for the entirety of these lands to be rewet by 2050.”

The provision on rewetting is an implementation of the international commitments of the EU. Peatlands are carbon sinks and the conservation of carbon sinks is included in the Paris Agreement (Article 5). The obligations assumed by the EU Member States at the 14th conference of the parties of the Ramsar Convention in 2022 already establishes the obligation to transform agriculture to sustain people and wetlands.¹⁸

It is also in line with the EU Climate Law, which includes the climate-neutrality objective by 2050. As also the agricultural sector will have to contribute to the goal of climate neutrality, it is in their own interest to rewet peatlands, since the EU as a whole could reduce up to 25% of GHG emissions from EU agriculture and agricultural land-use by rewetting just 3% of the EU agricultural land. Restoring drained peatlands used in agriculture is easily the single measure which could have the greatest climate benefit, the lowest cost for policy-makers, and the fewest farmers affected.¹⁹

The rewetting of such lands, their preservation as carbon sinks and the financial compensation for economic losses will be much less expensive for society as a whole and more effective than to reduce the same amount of greenhouse gas emissions in industrial sectors or transports. Of course, Member States will have once again, to

June 2022, SWD(2022) 167 final, p. 99; see also Part 2/12, Annex III, Who is affected and how (from page 141 onwards); part 4/12 on agro-ecosystems (from page 354 onwards).

¹⁴ EEA, Briefing. The importance of restoring nature in Europe, 9 May 2023.

¹⁵ See Carter, R., et al., Food systems at risk, WRI, 2021; Bras, T., et al., Severity of drought and heatwave crop losses tripled over the last five decades in Europe, 2021 Environ. Res. Lett. 16 065012; EEA, Climate change adaptation in the agriculture sector in Europe, EEA Report 4/2019, Luxembourg: Publications Office of the European Union, 2019.

¹⁶ Nadeu, E., Nature Restoration as a driver for Resilient Food Systems. Policy Report, Institute for European Environmental Policy, 2022.

¹⁷ Member States shall include the following elements in their national restoration plan: “the estimated financing needs for the implementation of the restoration measures, **which shall include the description of the support to stakeholders affected by restoration measures or other new obligations arising from this Regulation**, and the means of intended financing, public or private, including (co-) financing with Union funding instruments” (article 12, § 2, I) (emphasis added).

¹⁸ <https://www.ramsar.org/document/ramsar-policy-brief-6-transforming-agriculture-to-sustain-people-and-wetlands>

¹⁹ Greifswald Mire Centre, Opportunities for Peatlands and Paludiculture in the EU Common Agricultural Policy (2023-2027) Recommendations for EU Member States for their CAP Strategic Plans, https://greifswaldmoor.de/files/dokumente/Infopapiere_Briefings/202111_Opportunities-for-paludiculture-in-CAP-1.pdf

identify financial needs in their National Restoration Plans according to Article 12, § 2, I, of the Nature Restoration Law proposal.

6. Copa*Cogeca Priority Six – Article 10. “Indicators should, to the extent possible, be based on already existing internationally agreed indicators.”

The Nature Restoration Law proposal builds on experience with existing indicators, such as the farmland bird index²⁰ and the grassland butterfly index²¹ as proxies to assess the biodiversity status of agricultural landscapes in Europe.

²⁰ Nature Restoration Law proposal, consideration 75; https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Agri-environmental_indicator_-_population_trends_of_farmland_birds

²¹ <https://www.eea.europa.eu/data-and-maps/figures/european-grassland-butterfly-indicator>