

The EU Nature Restoration Law: Providing legal certainty in tackling the biodiversity and climate crisis

SERE Legal Working Group^{i ii}

May 2023

1. Weakening or deleting the Nature Restoration Law will affect legal certainty for a sustainable transition

The Commission proposal for an EU Nature Restoration Law (NRL) (June 2022) is a **balanced and groundbreaking law proposal** to tackle the biodiversity and climate crisis and achieve the biodiversity and climate objectives for 2030 to 2050. The preventive legal strategies we used in the past have largely failed: the majority of European habitats and species are in an unfavourable conservation status. We need **massive upscaling of restoration of ecosystems**, as this is one of the most important and effective measures to counter the current environmental crises and help the transition to a more sustainable society.

The NRL will provide **more legal certainty for Member States, businesses and stakeholders**. It provides clarity regarding future goals and it promotes a fair and just transition towards a sustainable economy across Europe. Deleting or weakening the NRL will only lead to more uncertainties for Member States, businesses and other stakeholders.

2. Improved legal certainty for restoration obligations

Restoration obligations for Member States already exist in current legislation (e.g. Habitats and Birds Directives, Water Framework Directive, Marine Strategy Framework Directive). However, restoration under existing laws is done on an ad hoc basis and often in small-scale projects. Existing laws miss the necessary deadlines and detailed and clear obligations on nature restoration. These shortcomings led to legal uncertainties and different applications of these laws in different Member States.

The NRL provides a **structured and integrated approach** to restoration and creates more **legal certainty** for Member States and stakeholders by establishing a legal framework with clear definitions, rights and obligations, targets and deadlines. It also includes obligations for agricultural systems and urban environments, that are largely missing in existing laws.

By restoring nature, ecosystems will become **more robust, connected and resilient** and better equipped to handle environmental pressures, and thus **allowing for greater flexibility** in human activities.

3. Improved legal certainty for non-deterioration obligations

Non-deterioration for restored nature is effective policymaking

The NRL includes obligations that restored nature should not deteriorate (article 4 (6); 5 (6)). These non-deterioration obligations are necessary to make the law **effective and efficient**: it would be politically incoherent, economically nonsensical and socially irresponsible to invest time and money in nature restoration and allow deterioration afterwards.

Non-deterioration for certain habitat types outside Natura 2000 provides more legal certainty

Areas with certain habitat types (Annex I & II of the NRL) should not deteriorate (article 4 (7); 5 (7)), also if these habitats are situated outside Natura 2000. This is important, because maintaining these habitats contributes to the achievement of the favorable conservation status of the species and habitats involved and **prevents additional costly restoration measures in the future**.

Non-deterioration obligations outside Natura 2000 sites are not new: there are already certain existing obligations outside Natura 2000 in other EU legislation (including implicit obligations for protection and restoration of habitats outside Natura 2000 if Natura 2000 sites are in an unfavourable conservation status; obligations for connectivity; protection obligations for bird species and their habitats under the Birds Directive and animal and plant species under Annex IV of the Habitats Directive that apply everywhere; the obligations to obtain good environmental status under the Water Framework Directive). Also, many Member States already have certain non-deterioration obligations outside Natura 2000 in their national legislation.

The non-deterioration obligations in the NRL are explicit, clear and holistic and will provide **more legal certainty**. If the non-deterioration obligations would not be included in the NRL, and further deterioration would be allowed, as was done in the past, this inaction would make nature restoration more costly afterwards, it would lead to more litigation, and would lead to further legal uncertainties, e.g. as seen in the nitrogen crisis in the Netherlands and in other Member States.

Through the non-deterioration obligations, the NRL helps to make the **necessary transition to a more sustainable society** and enables a good balance between nature and humans (preamble 49, 55, 58 ; article 11 (9)). **However, the NRL does not prohibit human activities per se**. There are numerous sustainable activities, and land and sea-use practices that offer mutual benefits for both nature and people. The NRL is well-suited to promote and expand the use of such practices across European Member States. By making sustainable activities economically viable, the NRL can help to create a more prosperous and resilient future for all.

4. Improved legal certainty for renewables, climate measures and food security

The NRL provides exceptions to the restoration and non-deterioration obligations, that allow e.g. for climate measures (article 4 (8); 5 (8)). The NRL includes alignment and a **win-win for biodiversity and renewable energy and climate measures** (article 1 (b), 4&5 (8)(b); 4 (9)(b); 11 (5)(a); 12 (2)(j- k); 15 (1)).

The NRL will not threaten food security: on the contrary. Evidence 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 (preamble 19, 49). Restoring pollinator populations is essential for the functioning of terrestrial ecosystems, human wellbeing and food security (preamble 46).

5. Flexibility for Member States

The NRL provides **flexibility for Member States** to specify where upscaling of restoration should take place. Through **National Restoration Plans**, Member States will quantify the area that needs to be restored for terrestrial and marine ecosystems, and to identify agricultural and forest areas in need of restoration etc. (articles 11-12).

The NRL does **not impose restoration obligations for the entire territory** of Member States. Restoration is required for habitats in areas where they are not in a good condition and areas where re-establishment is needed to achieve their favourable reference area or for improved connectivity. For terrestrial and marine ecosystems no restoration measures are required in 10% of the area of each group of habitat types from Annex I & II of the NRL that is not in good condition (article 4 & 5 (1)). Restoration of habitats of species is required to achieve sufficient quality and quantity, and for species populations to achieve satisfactory levels. It is largely up to the Member States **to decide where and how** these restoration requirements are implemented.

ⁱ The SERE Legal Working Group consists of experts on restoration law from different EU countries. This note was written by Prof. Dr. Alexandra Aragao (University of Coimbra), Eleonora Ciscato (University of Milan), Prof. Dr. An Cliquet* (Ghent University), Kris Decler (Research Institute for Nature and Forest), Harm Dotinga (Vogelbescherming Nederland), Dr. Floor Fleurke, (Tilburg University), Prof. Dr. Aveliina Helm (University of Tartu), Francesca Leucci (University of Bologna), Prof Dr. Volker Mauerhofer (Mid Sweden University), Matilde Meertens (Ghent University), Ana Mendes (Évora University), Prof. Dr. Hendrik Schoukens (Ghent University), Prof. Dr. Geert Van Hoorick (Ghent University) and Prof. Dr. Jonathan Verschuuren (Tilburg University); *corresponding author, An.Cliquet@ugent.be



ⁱⁱ For a more extensive analysis on the law from SERE Legal Working Group, see <https://chapter.ser.org/europe/files-2023-04-sere-legal-working-group-assessment-nature-restoration-law-final-210423-pdf/>

6. Misconceptions about the Nature Restoration Law

Many misconceptions and even false information exist on the NRL. Here are some important facts about the law.



EU Nature Restoration Law: myths and misconceptions debunked by the SER Legal Working Group

- 1. Will nature outside Natura 2000 sites be protected for the first time?**
No, species and habitats protection outside Natura 2000 is in the EU nature directives since 1979 and 1992


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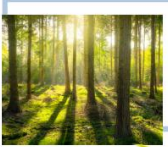
2. Will economic activities in restored areas be forbidden?
No, activities such as agriculture, forestry and fisheries can be allowed if they are sustainable and nature inclusive (article 11/9). The transition from intensive to sustainable production can be supported by EU/MS (preamble §70 and §74)

2.
- 3. Will the States lose their margin of appreciation?**
No, Member States can: A) choose where and how to restore (article 12) B) allow activities of overriding public interest (article 4 & 5/8 c) C) leave 10% of the habitat area in bad condition and not restored (art 4/1 & 5/1)


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4. Will producers lose CAP Funds?
No, because the CAP supports nature friendly practices and provides earmarked funding to that end (preamble § 53) Besides, the Just Transition Fund and other funds exist to support the ecologic transition (preamble §70)

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- 5. Will restoration threaten food production?**
No, on the contrary, evidence shows that restoring agro-ecosystems has positive impacts on food productivity in the long-term (preamble §15, §19, §46, §49, §56)


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6. Will restoration worsen the climate crisis?
No, there are synergies between restoration and climate policies (articles 1/b); 4 & 5/8 b; 9 b); 11/5 a); 12/2 j) k); 15/1)

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