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Subject:	Proposal for a Regulation of the European Parliament and of the Council on nature restoration
	- Guidance for further work

I. INTRODUCTION

1. On 22 of June 2022, the Commission adopted a proposal for a Regulation on nature restoration¹. The proposal aims to restore European habitats that are in poor condition, and to bring back nature to all ecosystems, from forest and agricultural land to marine, freshwater and urban ecosystems. Under this proposal, legally binding targets for nature restoration in different ecosystems will apply, complementing existing laws. The aim is to cover at least 20% of the EU's land and sea areas by 2030 with nature restoration measures, and eventually extend these to all ecosystems in need of restoration by 2050.

¹ 10607/22 + ADD 1.

2. The Economic and Social Committee adopted its opinion on the proposal on 25 January 2023. The Committee of the Regions adopted its opinion on the proposal on 9 February 2023.
3. Discussions in the European Parliament on the proposal are ongoing. MEP César Luena (S&D) has been appointed Rapporteur. The ENVI Committee considered the Rapporteur's draft report at its meeting on 12 January 2023. It plans to adopt its legislative report early June and the vote in Plenary is expected to take place in July.

II. WORK IN THE COUNCIL

4. Within the Council, the Working Party on the Environment (WPE) is responsible for examining the proposal at technical level. Due to the cross-cutting nature of the scope of the proposal, agricultural and forestry aspects were also presented by the Commission and discussed at the Agri/Fish Council meetings held on 21 November 2022 and 20 March 2023, under 'Any other business'². Upon request by a Member State, aspects related to energy were also discussed at the Transport, Telecommunications and Energy Council on 28 March 2023, also under "Any other business"³.
5. Under the Czech Presidency, the WPE held substantive discussions on the proposal and its impact assessment over the course of ten meetings. Based on these discussions and on comments submitted by delegations, the Czech Presidency prepared a first compromise text for Articles 1-10⁴ and identified two issues requiring political guidance from the Council. At its meeting on 20 December 2022, the Environment Council, held a policy debate on the two following issues: (i) the level of ambition and proposed timeframe and (ii) the "non-deterioration" principle.

² 7401/23.

³ 7670/23.

⁴ 14884/22.

6. Building upon the progress made during the Czech Presidency, the Swedish Presidency has pursued work at technical level and has put forward further compromises on the whole of the proposal for discussion at seven WPE meetings. The Presidency aims to reach an agreement on a General approach on the Nature Restoration proposal at the Environment Council on 20 June 2023.
7. At the WPE meeting that took place on 28 March 2023, there was a convergence of delegations' views on several compromises proposed by the Presidency for which Coreper could indicate that, at this stage, they are going in the right direction. Discussions have also shown that there is an essential political element requiring guidance from the Committee. The Presidency's compromise text proposals for the issues put forward to this Coreper meeting are set out in detail in document WK 5193/2023 INIT.

III. NATIONAL RESTORATION PLANS, MONITORING AND REPORTING

Stepwise approach “Package”

8. Article 13 of the Commission's proposal sets the deadline of two years for Member States to submit to the Commission a draft of their National Restoration Plans (NRPs). Throughout the discussions, most delegations indicated that the two-year time frame will be too great of a challenge, especially considering the requirement to conduct comprehensive preparatory monitoring (Article 11(1)), consult stakeholders (Article 11(11)) and prepare detailed planning of measures necessary to reach the 2040 and 2050 targets. Delegations also pointed out that the time necessary for the Commission to develop a uniform format for the NRPs (Article 12(4)) may further complicate the preparation and submission of NRPs within the proposed time frame.

9. In addition, paragraph 4 of Articles 4 and 5 of the Commission's proposal, establish that areas where habitat types are in unknown condition are to be considered as not being in good condition and, therefore, to be included in the draft NRPs. During the discussions at technical level, Member States expressed concerns about the extent and feasibility of this requirement within the proposed time frame.
10. In order to address the concerns raised by delegations, the Presidency proposes to follow a stepwise approach to the preparation and implementation of the NRPs, including amendments to handle habitats in unknown condition. The proposal for the stepwise approach should be seen as a package and includes amendments to several provisions, as follows:
- The Commission will develop and submit a draft uniform format for the NRPs (Article 12(4)) within 3 months of the entry into force of the Regulation;
 - Within two years of the entry into force of this Regulation, Member States shall submit a draft NRP in which Member States may focus on the period up until June 2032 when presenting the elements listed in Article 12(2), 12(3) and 12(3a), and limit the description of elements necessary to reach the targets and obligations beyond June 2032 to a strategic overview;
 - Member States shall submit their first report by June 2031, covering the period up to 2030, as set in Article 18(2);
 - Before July 2032, Member States shall review and revise their NRPs, notably by including closed knowledge gaps and more detailed planning of measures necessary to reach the targets up to 2040 replacing the strategic overview for that period; Before July 2042, Member States shall review and revise their NRPs, notably by including a more detailed planning of measures necessary to reach the targets up to 2050 replacing the strategic overview for that period.

- Revised NRPs will be published and communicated to the Commission. In any case, according to Article 15(3), the Commission may, after consultation with the Member State concerned, request that Member State to submit a revised NRP with supplementary measures, if the Commission, based on Member States' reporting, considers that progress made is insufficient to comply with the targets and obligations set in Articles 4-10 of the Regulation;
 - Areas to be restored by 2030, as referred in Articles 4(1)(a)/5(1)(a), shall only be based on habitat areas which are known not to be in good condition. Areas in unknown condition are therefore excluded from the quantification of the restoration needs in the draft NRPs;
 - However, knowledge gaps should be closed by 2030 pursuant to Article 4(4a).
11. It is to be noted that further discussion is needed at technical level in relation to marine habitats in unknown condition (Articles 5(1) and 5(4a)), as several delegations have pointed out that closing all knowledge gaps by 2030 is neither possible nor cost efficient.

Preparation, content, assessment, and review of the NRPs

12. In complement to the stepwise approach described above, the Presidency proposes the following main elements to Chapter III of the Regulation, in relation to the preparation, content, assessment, and review of NRPs:
- The reference to “the last 70 years” in relation to the concept of Favourable Reference Area in Article 11(2)(a)(iii), is replaced by “records of historical distribution”;
 - A new point (h) referring to the national Common Agricultural Policy strategic plans and a reference to the flood risk management plans are added to the elements listed in Article 11(7). The obligation to include in the NRPs an overview of the interplay with the CAP strategic plans is also added to Article 12 as a new paragraph 3a;
 - The Presidency also proposes to clarify that additional elements not listed in Article 11(7) may be taken into account by Member States when preparing their NRPs, and that some of the elements listed therein are only to be taken into account if applicable to the Member State concerned;

- The Presidency proposes to keep the list of restoration measures in Annex VII, while clarifying in Article 11(8) that the list in Annex VII is neither exhaustive nor mandatory;
- In Article 12(2), point (a), the Presidency proposes to clarify that maps of areas to be restored included in NRPs can be limited to be indicative and display potential areas for restoration.
- A minor amendment is included in Article 14(2), new point (c), to clarify that as part of the assessment by the Commission of the draft NRPs, the Commission shall evaluate its contribution to – not compliance with – EU overarching objectives;
- Article 15 on the review of the NRPs adapts the initial proposed obligation to review the NRPs every 10 years to the stepwise approach and adds the obligation for Member States to communicate their revised NRPs to the Commission.

13. It is to be noted that further changes to Chapter III might be necessary to accommodate ongoing discussions on Chapter II of the proposal.

Monitoring and reporting

14. In general, Article 17 of the Commission’s proposal sets a monitoring cycle of three years for certain indicators, such as the stock of organic carbon in cropland mineral soils, the share of agricultural land with high-diversity landscape features, standing deadwood, lying deadwood, the share of forests with uneven-aged structure and forest connectivity, and yearly for other indicators, such as the grassland butterfly index, the common forest bird index, and pollinator species. Every six years, Member States will also have to monitor the area and condition of habitats (Annex I and II) and the area and quality of habitats of species across their territory. In addition, Article 18 of the Commission’s proposal establishes that Member States should report to the Commission, on a yearly basis, the area subject to restoration measures and, every three years, on progress achieved in implementing the National Restoration Plans.

15. During technical discussions at the WPE, several Member States stressed the need for the streamlining of monitoring and reporting intervals and methods with other EU legislation monitoring and reporting requirements, so as to optimize resources and avoid overlaps and duplications. In order to address these concerns, the Presidency proposes the following compromise changes to Chapter IV:
- Setting a six-year cycle for the monitoring requirements, except for certain specific indicators where the yearly frequency is kept. Member States may within the six-year cycle choose to monitor indicators more frequently, for example soil and forest indicators, in order to streamline with other national monitoring schemes;
 - Setting a six-year cycle for reporting on progress in the implementation of the NRPs and on the results of the restoration measures put in place, supplemented by a three-year reporting cycle for the area subject to restoration measures according to Articles 4-10, therefore, harmonising reporting requirements under this Regulation with existing obligations, in particular under the Habitats and Birds Directives, but also with the Water Framework Directive and the Marine Strategy Framework Directive.
16. It is to be noted that further adjustments to Articles 17 and 18 on monitoring and reporting might be necessary to accommodate ongoing discussions on technical level on Chapter II of the proposal.

IV. NON-DETERIORATION REQUIREMENT

17. Articles 4 and 5 of the Commission's proposal, lay down the obligation for the Member States to ensure that areas in which good condition has been reached, and in which the sufficient quality of the habitats of the species has been reached (paragraph 6), do not deteriorate. But also, that areas where the habitat types occur (paragraph 7), do not deteriorate as compared to the current situation.

18. While delegations recognised that the non-deterioration requirement would ensure long-lasting effects of restoration and the cost-effectiveness of implemented measures, several Member States pointed out that its implementation, particularly outside Nature 2000 and in areas not subject to restoration measures, would be extremely demanding in terms of monitoring and assessment as well as in relation to the extensive management that would need to be put in place. In addition, delegations also pointed out that a non-deterioration requirement needs to take into account private ownership rights and ongoing land use.
19. The Commission's proposed non-deterioration requirement has a clear outcome-based approach, as Member States are obliged to ensure that the areas covered by habitat types do not deteriorate. In order to address the concerns expressed by several delegations, the Presidency has advanced proposals to either increase the flexibility within the outcome-based approach (notably by strengthening its exemptions and by including a threshold of "significant" deterioration), or to transform this requirement into an effort-based approach, where Member States would be required to demonstrate that they have put in place necessary measures to prevent deterioration.
20. Discussions at the WPE revealed that while a majority of delegations support an effort-based approach to the non-deterioration requirement, a significant number of delegations pointed out that an outcome-based approach is necessary to render the requirement effective. In order to reach a compromise that is acceptable to most delegations, the Presidency proposes the following:
- An outcome-based non-deterioration requirement would apply to areas which are subject to restoration and in which good condition has been reached, and also in which the sufficient quality of the habitats of the species has been reached (paragraph 6 of Articles 4 and 5);
 - An effort-based non-deterioration requirement would apply to areas where the habitat types occur (paragraph 7 of Articles 4 and 5) and is complemented by a threshold, so that it only applies to "significant" deterioration;

- In addition, a two-year implementation period for putting in place the measures to prevent deterioration would be added to paragraph 7 of Articles 4 and 5;
- A new paragraph 8a is added to Articles 4 and 5 clarifying that exemptions granted for a plan or project of overriding public interest can be evaluated at a general level in relation to paragraph 7 of Articles 4 and 5, but a case-by-case evaluation is kept in relation to paragraph 6 of Articles 4 and 5.
- A new point (d) is added to Articles 4(8), 4(8a), 5(8) and 5(8a), introducing a derogation for action or inaction from third countries for which the Member State concerned is not responsible.

21. It is to be noted that further adjustments to the non-deterioration requirements in Article 5, might be necessary to accommodate ongoing discussions on technical level regarding marine habitats.

V. CONCLUSION

22. In view of the above, the Permanent Representatives Committee is invited to:
- indicate that the Presidency's compromise proposals for the "stepwise approach" package, for the preparation, content, assessment and review of the NRPs (Chapter III), and for the monitoring and reporting (Chapter IV) are going in the right direction;
 - provide political guidance on the direction to take regarding the non-deterioration requirement for the further work on technical level, with a view to allow the Council to reach an agreement on a General Approach, at its meeting on 20 June.