



Regulation on nature restoration EC-Proposal COM(2022) 304 ([Link](#)) Position paper

Austrian Federal Economic Chamber (WKO)
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WKO Position paper on the EC-Proposal on nature restoration
COM(2022) 304 ([Link](#)) v. 22. 06.2022

Business is committed to biodiversity conservation, but criticises a lack of consideration of the economic and political (subsidiary) effects!

The WKO supports the efforts of the EC to restore damaged habitats for the protection of biodiversity - many economic and entrepreneurial activities use healthy ecosystems in their interconnected functionality.

Clear objectives, measures with (economic) sense of proportion, coherent instruments and a reliable, long-term development of a regulatory policy framework in nature conservation are crucial for securing competitiveness and the (European) business location. WKO demands a comprehensive examination and evaluation of all economic and social consequences, taking into account the overall economic and political interests of the EU.

The most important points of criticism from the point of view of the WKO:

Legal act form of a directive is more appropriate!

Apart from the prohibition of deterioration (Art. 4), the draft regulation is addressed exclusively to the Member States that must adopt comprehensive "implementing provisions" in order to implement the restoration obligations - the legal act form of a directive is the appropriate normative implementation against the background of the fundamental rights relevance of the proposed regulations.

Fundamental rights only based on Art. 37 (environmental protection) of the EU Charter of Fundamental Rights - fundamental right "property" is not even mentioned!

The implementation of the proposed large-scale objectives and measures will interfere with the property rights of landowners - in achieving the objectives, more emphasis must be placed on voluntariness, consultation and stronger financial incentives or compensation.

Legal certainty and plannability - Many questions remain unanswered!

For the WKO, it is undisputed that economic activities must be carried out - to an appropriate extent - in harmony with nature.

The protection and expansion of biodiversity is usually in direct or indirect competition with human activities. Large-scale and specific targets and legally binding obligations to restore damaged ecosystems impose massive spatial restrictions on business locations as well as additional bureaucracy for companies and administration. There is a lack of balance here between the necessary protection of biodiversity and the provision of the necessary resources for further economic development.

Extension of EU nature conservation law - economic realities outside protected areas ignored!

The restoration objectives do not only concern priority habitat types and species according to the Habitats Directive, but also provide for "habitat improvement" for all non-priority habitat types and species. This also applies outside defined Natura 2000 sites, where ecosystems are to be protected and restored (Articles 4 and 11). The proposed regulation is a massive tightening of the existing EU nature conservation law and the expansion of already existing as well as the establishment of new restored areas worthy of protection. This objective requires a careful sustainable balancing of the different interests and competing uses.

Economic projects are made more difficult

In principle, economic projects can be realized on the new protected areas required by the proposal (Art. 4 paras. 6-8), but only under very strict conditions: The project must be a "project of overriding public interest" for which "no less damaging alternative solutions" are available.

Each project would have to be examined separately and at great expense (Art. 4 para 8), which would lead to both longer and more complex procedures. In any case, it would be necessary to define these public interests in more detail.

Conservation condition in restored ecosystems still completely unclear - concept of "good condition" with weaknesses

The Commission emphasizes that the restoration of nature is not synonymous with nature conservation and should not automatically lead to more protected areas, but it is currently still completely unclear what "conservation condition" should exist for the restored areas outside the Natura 2000 network.

The restoration measures are based on the concept of a "good condition", which must not be deteriorated (Art. 4). For habitat types or ecosystems not covered by the Habitats Directive, "good condition" is not even defined. For the correct selection of indicators and the assessment of the "good condition" of ecosystems, a sound assessment of the social, ecological and economic impacts is needed in advance to enable a scientifically sound and transparent decision-making.

Backward-looking view prevents looking forward!

In Art. 11 para. 2, Member States shall - in order to quantify the areas that need to be restored - start with an assessment and restoring of ecosystems whose "good condition" has been lost in the last 70 years.

The restoration of original conditions under changed environmental conditions is not always feasible or desirable - the answer to the biodiversity and climate crises cannot be to cling to the past without reflection. On the contrary, we must look ahead and proactively seek future-oriented adaptation measures.

Restoration plans at Member State level very ambitious

In order to contribute to the achievement of the objectives while allowing sufficient flexibility for national specificities, the proposal for the regulation requires the preparation of national restoration plans (Articles 11-15). The deadlines and general content requirements for the national restoration plans are very ambitious and difficult to meet in view of the high bureaucratic effort and the limited state resources in terms of personnel and money.

The Commission also recognises that the preparation of the restoration plan requires comprehensive, quality-assured data baselines. However, this data availability usually only applies to priority habitat types and species according to the Habitats Directive, which makes a timely and comprehensive preparation of restoration plans, which form the basis for setting measures, impossible.

Accelerate the expansion of renewable energies in all areas!

In the selection of protected areas, the proposal provides for a coordination obligation only with go-to areas (Art. 11 para. 6). This is intended to accelerate projects for the urgently needed expansion of renewable energy production. However, the focus of these acceleration measures is only on installations for the production of renewable energy, energy storage installations at the same site and the installations required for their connection to the grid. This ignores important areas that are essential for the expansion of renewable energy.

Access to justice - restricting NGOs' ability to make submissions

The regulation requires member states to draw up restoration plans and report them to the EU-Commission. These restoration plans are to be reviewed regularly and improved if necessary.

Members of the public are granted the right in Art. 16 to challenge the legality of the national restoration plans or any omissions by the competent authorities in court, regardless of their role during the process of preparing and defining the national restoration plan.

This broad possibility would mean that NGOs could raise objections even after the designation of the protected areas and the preparation of the restoration plans - this is explicitly rejected without preclusive rules and strict transparency standards.

Delegation of powers to EU-Commission to amend the annexes unacceptable

According to the proposal (Art. 19-21), the Commission is granted the sole power to adopt delegated acts to amend all Annexes of the Regulation. Since the annexes with the lists of habitat types and species determine central contents of the obligations and prohibitions, it would thus have far-reaching influence on changes and extensions in these important areas. This would largely deprive policy-makers of important decision-making and steering leeway.

However, it must remain the responsibility of politicians to be able to react quickly to changes in the framework conditions or to misjudgements in order to avoid negative social and economic consequences and to create legal certainty for the economy.

The use and protection of forests must be compatible!

It has to be emphasized that binding targets, as defined in the guideline on management targets, means a strong personal intervention in the form of management.

The draft demands the increase of deadwood in forests as well as the abandonment of timber harvesting (Annex VII) even outside protected areas, although the future protected areas (forests and other landscapes) are supposed to cover about 30% of the country's area. Over-ambitious targets for the decommissioning of commercial forests encourage the relocation of production outside the EU, with all the associated negative consequences: Less CO₂ storage due to the decommissioning of forest - wood use means CO₂ storage in e.g. products and buildings. This binds CO₂ from the atmosphere and at the same time saves emissions of fossil fuels.

Financing

In principle, we welcome the fact that it is foreseen that public and private funding will be required. However, it is not yet made clear which actors will ultimately bear the responsibility and costs of implementing restoration measures that require significant human and financial resources (up to €54 billion, according to the Commission).



Contact:

Jürgen Streitner, Head of Department Environment and Energy Policy, WKO, +43 590 900-4195,

juergen.streitner@wko.at

Christoph Haller, Department of Environment and Energy Policy, WKO, +43 590 900-4196, christoph.haller@wko.at

Barbara Lehmann, WKO Brussels, EU Representation, +32 2 286 58 80, barbara.lehmann@eu.austria.be

