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How to protect and rebuild biodiversity and ecosystems across the European Union? From a sectoral perspective to horizontal challenges – An overview of EU nature protection law*

Jak chronić i odbudowywać różnorodność biologiczną i ekosystemy w Unii Europejskiej? Od perspektywy sektorowej do wyzwań horyzontalnych – spojrzenie na unijne prawo ochrony przyrody

Abstract: The paper analyses the current challenges in protecting and rebuilding biodiversity and ecosystems across the European Union. Its aim is to demonstrate the need to move away from the concept of conservation – which focusses on preserving single elements of nature – towards a holistic approach. Given the need to halt the decline of the natural environment, attention is increasingly directed towards nature restoration. The article then discusses the EU's Nature Restoration Law, which marks a shift from a sectoral perspective toward addressing horizontal challenges in EU biodiversity (nature protection) law.

Keywords: nature restoration regulation, environmental law, holistic approach, integrated protection of biodiversity

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Abstrakt: Celem artykułu jest analiza aktualnych wyzwań związanych z ochroną i odbudową różnorodności biologicznej oraz ekosystemów w Unii Europejskiej. Artykuł stanowi próbę wykazania konieczności odejścia od koncepcji ochrony przyrody, skupiającej się na zachowaniu pojedynczych tworów i elementów natury, na rzecz podejścia holistycznego. Aby powstrzymać degradację środowiska naturalnego, coraz większą uwagę zwraca się na odbudowę przyrody. W artykule omówiono następnie przykład unijnego rozporządzenia dotyczącego odbudowy przyrody (Nature Restoration Law), które odchodzi od sektorowego podejścia w obszarze ochrony różnorodności biologicznej/bioróżnorodności (ochrony przyrody) na rzecz podejścia uwzględniającego wyzwania horyzontalne.

Słowa kluczowe: regulacje dotyczące odbudowy środowiska naturalnego, prawo ochrony przyrody, podejście holistyczne, zintegrowana ochrona różnorodności biologicznej

1. Introduction

Environmental law is both the law of risk (encompassing the governance of potential hazards and the mitigation of adverse consequences) and the law of distributing and protecting common goods over which a multitude of interests prevail.¹ This multifaceted nature of environmental law is characterised by its intricate relationship with various interests related to the utilisation of these resources, emphasising the need for balanced decision-making and the consideration of ecological, economic, and social factors in the pursuit of sustainable development. By combining these areas in a purposeful way, the aim is to create a uniform, comprehensive regulatory structure that can adequately protect the environment (understood as a structure of action) in terms of eliminating environmental damage, removing and avoiding environmental risks and restoring its ability to function.²

It is evident that biodiversity constitutes the foundation of life on Earth; its significance extends beyond the realm of environmental and climate protection, as it is equally crucial for sustaining human life.³ It is evident that biodiversity

¹ E. Schmidt-Aßmann, *Ogólne prawo administracyjne jako idea porządku* [General Administrative Law as an Idea of Order], C.H. Beck, Warsaw 2011, p. 144–145.

² Ibidem, p. 145–146.

³ See. e.g., S. Díaz, J. Settele, E.S. Brondízio, H.T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K.A. Brauman, S.H.M. Butchart, K.M.A. Chan, L.A. Garibaldi, K.I.J. Liu, S.M. Subramanian,

loss constitutes a component of a triad of planetary crises, alongside climate change and toxic pollution.

But biodiversity loss as part of a “triple planetary crisis” (along with climate change and pollution).⁴ The term “biodiversity loss” is used to denote the ongoing decline in the variety of life on Earth. This decline encompasses species extinctions, habitat loss and ecosystem degradation.⁵ The present crisis is principally the result of human activities, including, but not limited to, the destruction of habitats, pollution, climate change, and the overexploitation of resources.⁶

In 2019 the European Commission unveiled a comprehensive array of policy initiatives with the objective of transforming the EU into a sustainable and climate-neutral economy by 2050. This initiative, entitled the European Green Deal, represents a significant commitment on the part of the European Commission to address the pressing environmental challenges of the contemporary era.⁷ In the context of the aforementioned policies, the Commission

G.F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y.J. Shin, I.J. Visseren-Hamakers, K.J. Willis, C.N. Zayas, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services*, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Paris 2019; *Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems – Summary for Policymakers*, Intergovernmental Panel on Climate Change, Geneva 2019, p. 7, https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf [access: 31.07.2025].

⁴ A. Sikora-Kaléda, *Rights in the Era of Climate Change Contemplating the Limits of Human Rights as Instruments of Pressure for the Planetary Cause*, in: A. Sikora-Kaléda, I. Kawka (eds), *Rights in the Era of a Climate Change: Contemplating the Limits of Human Rights as Instruments of Pressure for the Planetary Cause*, Księgarnia Akademicka, Cracow 2025, p. 9 and seq; E. Morgera, *International Environmental Law: A Case for Transformative Change through the Lens of Children's Human Rights*, “Environmental Policy and Law” 2024, vol. 53, no. 5–6, p. 307–319; A. Cliquet, *Linkages Between Biodiversity and Climate Change. Twin Crises Need Twin Solutions*, in: E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque (eds), *Rethinking Environmental Law. Connectivity, Intersections and Conflicts in the Global Environmental Crisis*, Intersentia, Cambridge 2024, p. 10–39.

⁵ A. Cliquet, *Linkages Between Biodiversity and Climate Change...*, p. 11–14; *Connecting Biodiversity and Climate Change Mitigation and Adaptation: Report of the Second Ad Hoc Technical Expert Group on Biodiversity and Climate Change*, Secretariat of the Convention on Biological Diversity, Montreal 2009, <https://www.cbd.int/doc/publications/cbd-ts-41-en.pdf> [access: 14.07.2025].

⁶ S. Díaz, J. Settele, E.S. Brondízio, H.T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K.A. Brauman, S.H.M. Butchart, K.M.A. Chan, L.A. Garibaldi, K.I.J. Liu, S.M. Subramanian, G.F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y.J. Shin, I.J. Visseren-Hamakers, K.J. Willis, C.N. Zayas, *Summary for policymakers...*, op. cit.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52019DC0640&from=EN> [access: 14.07.2025].

reaffirmed the Union's robust environmental policy framework by adopting the EU Biodiversity Strategy. Among these policies, the Commission reiterated the strong environmental policy of the Union by adopting the EU Biodiversity Strategy.⁸ As such, the European Green Deal laid the foundations, or *premises*, of EU action to tackle the drivers of climate change and biodiversity loss.⁹

A traditional view of environmental law sees this area of regulation as a set of legal norms regarding the object (specificity) of protected goods, i.e. the environment, its individual elements (including nature), the protection of human life and health and the identification of specific threats.¹⁰ It links the challenges facing nature protection today with the requirement for a complex, holistic approach; therefore, we see nature protection evolving from a sectoral perspective to horizontal challenges.¹¹

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Biodiversity Strategy for 2030: Bringing nature back into our lives*, COM/2020/380 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020DC0380> [access: 14.07.2025]. See also the Biodiversity Strategy to 2020 – Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Our life insurance, our natural capital: an EU biodiversity strategy to 2020*, COM/2011/244 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011DC0244> [access: 14.07.2025].

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final, p. 2 and passim, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52019DC0640&from=EN> [access: 14.07.2025]. See also on linkages between biodiversity and climate change: A. Trouwborst, *International Nature Conservation Law and the Adaptation of Biodiversity to Climate Change: a Mismatch?*, "Journal of Environmental Law" 2009, vol. 21, no. 3, p. 419–442; A. Cliquet, C. Backes, J. Harris, P. Howsam, *Adaptation to Climate Change: Legal Challenges for Protected Areas*, "Utrecht Law Review" 2009, vol. 5, no. 1, p. 158–175; A. Trouwborst, *Conserving European Biodiversity in a Changing Climate: The Bern Convention, the European Union Birds and Habitats Directives and the Adaptation of Nature to Climate Change*, "Review of European Community and International Environmental Law" 2011 vol. 20, no. 1, p. 62–77; A. Cliquet, *International and European Law on Protected Areas and Climate Change: Need for Adaptation or Implementation?*, "Environmental Management" 2014, vol. 54, p. 721–722.

¹⁰ See e.g. M. Baran, *Pytanie o potrzebę zmiany paradygmatu w prawie (ochrony) środowiska: środowisko jako przedmiot czy podmiot prawa – wybrane uwagi* [Question About the Need for a Paradigm Shift in Environmental (Protection) Law: The Environment as an Object or Subject of Law – Selected Comments], in: M. Baran, B. Iwańska, I. Przybojewska (eds), *Prawa i interesy w ochronie środowiska. Perspektywa międzynarodowa, unijna i krajowa* [Rights and Interests in Environmental Protection. International, EU, and National Perspectives], C.H. Beck, Warsaw 2024, p. 121–123; A. Sikora, *Constitutionalisation of Environmental Protection Law in EU Law*, Europa Law Publishing, Zutphen 2020, p. 5–15.

¹¹ See broadly on evolution of EU environmental law: E. Orlando, *The Evolution of EU Legislation and Policy in the Environmental Field: Achievements and Current Challenges*, in: C. Bakker, F. Francioni (eds), *The EU, the US and Global Climate Governance*, Routledge, London 2014, p. 61 et seq.; E. Morgera, M. Geelhoed, M. Ntona, *European Environmental Law*, in: E. Techera,

Simultaneously, in an era characterised by mounting environmental challenges, the complexity of protection is imperative for the efficacy of the implemented measures.¹² These challenges are a consequence of the repercussions of human activity on the environment, which are particularly evident in the Anthropocene era.¹³

It is clear that a transition is required from the prevailing concept¹⁴ of conservation, which focusses on preserving single elements of nature in its original form, towards a more comprehensive, integrated and holistic approach. It is no longer just a matter of protecting dedicated areas; it is increasingly important to regulate the protection and sustainable use of nature outside protected areas. It is imperative that conservation is regarded as a fundamental component of spatial policy, in addition to sectoral policies and development strategies drawn up by national authorities at various levels. Traditional environmental law is human-centered (anthropocentric) and treats nature primarily as a resource to be managed, exploited, or conserved. Ecological law flips this paradigm. It is built on the following core concepts: ecocentrism (nature-centered), ecological primacy and ecological justice.¹⁵

This paper investigates the question of how to protect and rebuild biodiversity in the EU. Its objective is to demonstrate the departure from a sectoral perspective to horizontal challenges in EU nature protection law. In this regard, EU climate law and EU nature restoration law are highlighted as exemplifying a holistic approach to protecting nature (biodiversity). In the current state of development of EU nature protection law, the introduction of the new legislation is a functional mechanism for

J. Lindley, K.N. Scott, A. Telesetsky (eds) *Routledge Handbook of International Environmental Law*, Routledge, London 2020, p. 234 et seq.

¹² E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction: Rethinking Environmental Law*, in: E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque (eds), *Rethinking Environmental Law. Connectivity, Intersections and Conflicts in the Global Environmental Crisis*, Intersentia, Cambridge 2024, p. 1–2.

¹³ See, e.g. H.O. Pörtner, R.J. Scholes, A. Arneth, D.K.A. Barnes, M.T. Burrows, S.E. Diamond, C.M. Duarte, W. Kiessling, P. Leadley, S. Managi, P. McElwee, G. Midgley, H.T. Ngo, D. Obura, U. Pascual, M. Sankaran, Y.J. Shin, A.L. Val, *Overcoming the Coupled Climate and Biodiversity Crises and Their Societal Impacts*, “Science” 2023, vol. 380, no. 6642, p. 1–12.

¹⁴ The term “concept” is not used in its strict legal meaning, but in a broader sense.

¹⁵ For a normative concept of “ecological law” articulated in the legal literature, see K. Anker, P.D. Burdon, G. Garver, M. Maloney, C. Sbert, *From Environmental Law to Ecological Law*, Routledge, London 2021; C. Sbert, *The Lens of Ecological Law: A look at Mining*, Edward Elgar Publishing, Cheltenham 2020; K. Bosselmann, *The Rule of Law Grounded in the Earth: Ecological Integrity as a Grundnorm*, in: L. Westra, M. Vilela (eds), *The Earth Charter, Ecological Integrity and Social Movements*, Routledge, London 2014, p. 3–12; G. Garver, *The Rule of Ecological Law: The Legal Complement to Degrowth Economics*, “Sustainability” 2013, vol. 5, no. 1, p. 316–337.

achieving national and European objectives in relation to climate and biodiversity. Before proceeding, two preliminary points should be made. Recently, legislative approaches to nature conservation and biodiversity at the EU level have been part of a general process recommending a paradigm shift in nature conservation.¹⁶ This shift is evident in the programming documents of the European Green Deal, where we can observe the first steps of a legal process that is moving away from an approach limited solely to ecological modernization to broadly implement a different logic of “ecological primacy”¹⁷ through the implementation of the “do no harm”¹⁸ principle.

The logic of the European Green Deal has shifted from European regulations that typically address individual environmental issues to an increasingly integrated, holistic approach that coordinates various policies and measures.¹⁹ While an integrated approach to environmental protection is not a new concept in law – as EU regulations already have a long history of addressing industrial emissions in large installations²⁰ – such an approach had not been adopted for nature conservation and biodiversity.²¹

¹⁶ See e.g., A. Devis, *Change of Paradigm in EU Environmental Law: Does the Climate Crisis Now ‘Override’ the Biodiversity Crisis?*, <https://www.europeanlawblog.eu/pub/l74pacq5/release/4> [access: 31.07.2025]; E. Lees, O.W. Pedersen, *Restoring the Regulated: The EU’s Nature Restoration Law*, “Journal of Environmental Law” 2025, vol. 37, no. 1, p. 75–96.

¹⁷ E. Chiti, *Managing the Ecological Transition of the EU: The European Green Deal as Regulatory Process*, “Common Market Law Review” 2022, vol. 59, no. 1, p. 19 et seq.

¹⁸ M. Onida, *The “Do Not (Significantly) Harm” Principle*, in: K. de Graaf, B. Marseille, S. Prechal, R. Widdershoven, H. Winter (eds), *Liber amicorum Jan Jans*, Uitgeverij Paris, Zutphen 2021, p. 45 et seq. Though the European Green Deal does not elaborate on this principle, guidance can be found in the Taxonomy Regulation (and associated delegated acts), which specifies under which circumstances economic activities can be considered to lead to significant harm to environmental objectives. See Art. 17 of Regulation (EU) 2020/852 of the European Parliament and Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.06.2020, p. 13–43 as well as Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, OJ L 442, 9.12.2021, p. 1–349.

¹⁹ L. Krämer, *Planning for Climate and the Environment: the EU Green Deal*, “Journal for European Environmental & Planning Law” 2020, vol. 17, no. 3, p. 267–306; E. Chiti, *Managing the Ecological Transition...*, p. 19–48; E. Chiti, A. Giorgi, *Sustainability in Transition*, in: E. Chiti, A. Giorgi (eds), *Ecological Sustainability and the Law the European Green Deal and the New Frontiers of Sustainability*, Routledge, London 2025, p. 1–28.

²⁰ F. Oosterhuis, M. Peeters, *Limits to International in Pollution Prevention and Control*, in: M.G.W.M. Peeters, R. Uylenburg (eds), *EU Environmental Legislation: Legal Perspectives on Regulatory Strategies*, Edward Elgar Publishing, London 2014, p. 91–115.

²¹ See e.g. M. Biscosi, *From Natura to Nature Restoration. The Ecological Objective of the Green Deal at the Legal Litmus Test*, in: E. Chiti, A. Giorgi (eds), *Ecological Sustainability and the Law the*

2. Nature protection's place in EU law: The beginnings

From a historical perspective, EU nature protection law²² originated with Directive 79/409/EEC (the Birds Directive), concerning the protection of wild birds.²³ Adopted when international nature conservation initiatives were just beginning to take shape, this directive is the oldest piece of European Union environmental legislation. A few years later, in 1992, Directive 92/43/EEC (the Habitats Directive) was adopted.²⁴ These two directives constitute the cornerstone of EU nature conservation (habitats and species).²⁵

As for the protection of biodiversity, other legal acts in the area of environmental protection are also important,²⁶ as well as legal acts such as the Water Framework Directive,²⁷ the Marine Strategy Directive,²⁸ the common fisheries policy and the common agricultural policy.²⁹

European Green Deal and the New Frontiers of Sustainability, Routledge, London 2025, p. 149–170; E. Chiti, A. Giorgi, *Sustainability in Transition...*, p. 149–170; L. Pascucci, *Nature Restoration Law: Reshaping Sustainable Development?*, in: E. Chiti, A. Giorgi (eds), *Ecological Sustainability and the Law the European Green Deal and the New Frontiers of Sustainability*, Routledge, London 2025, p. 171–182.

²² The notion “nature protection law” and “EU biodiversity law” are used as synonyms in this text.

²³ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.04.1979, p. 1–18. This directive was replaced by 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, 26.01.2012, p. 7–25.

²⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.07.1992, p. 7–50.

²⁵ See for an overview: A. García-Ureta, *EU Biodiversity Law: Wild Birds and Habitats Directives*, Europa Law Publishing, Zutphen 2020; A. Cliquet, *EU Nature Conservation Law: Fit for Purpose*, in: M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, London 2020, p. 265–279; G. Tucker, K. Hart, A. Farmer, E. Dunn, D. Baldock, *Nature Conservation Policy, Legislation and Funding in the EU*, in: G. Tucker (ed.), *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Oxford 2023, p. 59–105; N. de Sadeleer, *Habitats Conservation in EC Law – From Nature Sanctuaries to Ecological Networks*, “Yearbook of European Environmental Law” 2005, vol. 5, p. 215.

²⁶ Such as, e.g., Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.03.1997, p. 1–69) and Regulation 1143/2014 on invasive alien species (Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, OJ L 317, 4.11.2014, p. 35–55).

²⁷ 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, 22.12.2000, p. 1–73.

²⁸ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJ L 164, 25.06.2008, p. 19–40.

²⁹ A. Cliquet, *EU Nature Conservation Law: Fit for Purpose...*, p. 265 et seq; On the relationship between biodiversity protection and the CFP and CAP see: H. Schoukens, H. Dotinga, *Natura 2000*

The Birds Directive and the Habitats Directive constitute a fundamental instrument for achieving the Treaty objectives of environmental policy (Article 191(1) TFEU) in the form of preserving, protecting and improving the nature and protecting biodiversity by preserving and enhancing the EU's natural resources.³⁰ Legislation covering areas such as pollution, invasive alien species and climate change also contributes to conserving biodiversity by tackling the drivers of its loss.³¹

The primary objective of the Habitats Directive – “to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies” – is achieved through measures to “maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest”.

This is achieved by establishing Natura 2000 (Article 3(1) of the Directive), a European ecological network of special conservation areas containing the habitat types listed in the Annexes to the Directive, in order to maintain these natural habitat types and species habitats at a favourable conservation status (obligation of result) in their natural range or, where appropriate, to restore them.³² The Natura 2000 network also includes special conservation areas classified by the Member States in accordance with the Birds Directive.

The way of constructing the protection used by the EU legislator in both directives is based on the traditional “command and control”³³ method, in

and Fisheries: A Question of Competence or Willingness, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 375–398; I. Doussan, H. Schoukens, *Biodiversity and Agriculture: Greening the CAP Beyond the Status Quo*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 443–451.

³⁰ A. Cliquet, *EU Nature Conservation Law: Fit for Purpose...*, p. 267.

³¹ See C. Romao, *The Added Value of the Habitats Directive: Is Biodiversity Better Protected Since the Directive Entered into Force?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 21–28; G. Van Hoorick, *Biodiversity outside protected areas: an outlaw waiting to be saved?*, in: ..., C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 452–468.

³² *Natura 2000 Network's Contribution to Good Status*, <https://www.eea.europa.eu/en/topics/at-a-glance/nature/state-of-nature-in-europe-a-health-check/natura2000-networks-contribution-to-good-status> [access: 15.09.2025]; *Managing Natura 2000 Sites: The Provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, European Union Publications Office, Luxembourg 2000, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2019_033_R_0001 [access: 15.09.2025].

³³ In environmental policy, the command-and-control approach basically involves the setting of standards to protect or improve environmental quality. Otherwise new environmental

terms of imposing specific obligations on Member States to take specific actions (positive obligations) and formulating prohibitions addressed to Member States regarding certain actions (negative obligations).³⁴

The source of positive obligations in relation to Natura 2000 sites is currently³⁵ Articles 6 and 7 of the Habitats Directive,³⁶ which provide for “a series of specific obligations and procedures designed (...) to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation”.³⁷

These include the following duties:

- to establish conservation measures involving, “if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the environmental requirements of the natural habitat types listed in Annex I or the species listed in Annex II living on those sites” (Article 6(1) Habitats Directive)³⁸
- the general obligation of protection, including taking “appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, insofar as such

governance (NEG) approach is a decentralized, collaborative approach to environmental management that broadens participation beyond top-down state regulations. The literature on new environmental governance (NEG) is vast, but worth mentioning: e.g., G. de Búrca, J. Scott (eds), *Law and New Governance in the EU and the US*, Hart Publishing, Oxford, 2006; N. Gunningham, C. Holley, *Next Generation Environmental Regulation: Law, Regulation and Governance*, “Annual Review of Law and Social Science” 2016, vol. 12, no. 1, p. 273–293; N. Gunningham, *The New Collaborative Environmental Governance: The Localization of Regulation*, “Journal of Law and Society” 2009, vol. 36, no. 1, p. 145–166.

³⁴ A. Cliquet, *EU Nature Conservation Law: Fit for Purpose...*, p. 266.

³⁵ The original obligation for Member States arose also from Article 4(4) of the Birds Directive.

³⁶ In accordance with Article 7 of the Habitats Directive, the obligations arising from Article 6(2), (3) and (4) of this Directive shall replace any obligations arising from the first sentence of Article 4(4) of Directive 79/409/EEC in respect of sites classified in accordance with Article 4(1) of that Directive or similarly recognised under Article 4(2), from the date of implementation of this Directive or from the date of classification or recognition by the Member State under Directive 79/409/EEC, where the latter date is later.

³⁷ E.g. judgment of the CJ of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, EU:C:2013:220, para 36; L. Cashman, *Ensuring Compliance: Regulatory Regimes under the EU Nature Directives*, in: A.L.R. Jackson (ed.), *Nature Law and Policy in Europe*, Routledge, London 2023, p. 47–72.

³⁸ See judgments of the CJ: of 10 May 2007, Case C-508/04, *Commission of the European Communities v Republic of Austria*, EU:C:2007:274, paras 76, 87; of 17 April 2018, Case C-441/17, *European Commission v Republic of Poland*, EU:C:2018:255, para 213.

- disturbance could be significant in relation to the objectives of this Directive” (Art. 6(2) of the Habitats Directive)³⁹
- the procedure laid down in Art. 6(3) of the Habitats Directive for appropriately assessing plans or projects which are not directly connected with or necessary for the management of an area, but may have a significant effect thereon, comprising two stages – the preliminary assessment and the assessment proper⁴⁰ – the result of which determines whether the plan or project is approved or rejected (Article 6(3) of the Habitats Directive);⁴¹
 - the derogation provided for in Art. 6(4) of the Directive that enables a plan or project to be carried out even if its possible adverse impact on the integrity of a given area has been confirmed, which should be interpreted strictly⁴² and may only be applied after an appropriate assessment of the impact on the Natura 2000 area has been carried out (Article 6(3) of the Habitats Directive).⁴³

Essential instruments for achieving and implementing the objectives of the Habitats Directive and the Birds Directive are the species protection obligations arising there from (Articles 5–9 of the Birds Directive and Articles 12–16 of the Habitats Directive), which create a coherent system

³⁹ E.g. judgments of the CJ: of 24 November 2011, Case C-404/09, *European Commission v Kingdom of Spain*, EU:C:2011:768, para 142; of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, para 32; of 15 May 2014, Case C-521/12, *T.C. Briels and Others v Minister van Infrastructuur en Milieu*, EU:C:2014:330, para 19.

⁴⁰ E.g. judgment of the CJ of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, paras 29–31.

⁴¹ See judgments of the CJ: of 7 September 2004, Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, EU:C:2004:482, para 23–27; of 13 December 2007, Case C-418/04, *Commission of the European Communities v Ireland*, EU:C:2007:780, paras 238–240; of 14 January 2010, Case C-226/08, *Stadt Papenburg v Bundesrepublik Deutschland*, EU:C:2010:19, para 38–40; of 20 October 2005, Case C-6/04, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, EU:C:2005:613, para 54; of 10 January 2006, Case C-98/03, *Commission of the European Communities v Federal Republic of Germany*, EU:C:2006:529, para 39–41.

⁴² Judgment of the CJ of 14 January 2016, Case C-399/14, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, EU:C:2016:10, para 73.

⁴³ C. Sobotta, *The Margin of Appreciation When Applying Article 6(3) and (4) of the Habitats Directive*, in: A.L.R. Jackson (ed.), *Nature Law and Policy in Europe*, Routledge, London 2023, p. 73–90; G. Balias, *The Appropriate Assessment under the European Habitats Directive: Interplay Between Science, Law, and Policy*, “Journal of International Wildlife Law & Policy” 2018, vol. 21, no. 4, p. 281–306; judgments of the CJ: of 14 September 2006, Case C-244/05, *Bund Naturschutz in Bayern eV and Others v Freistaat Bayern*, EU:C:2006:579, para 46; of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, para 43–46.

of standards requiring Member States to establish a protection system for specific species of fauna and flora. These obligations are essentially prohibitive in nature.⁴⁴ Species protection refers not only to direct impacts on the species themselves, but also (in specific cases) on their breeding and resting places. However, unlike Natura 2000 sites, there are no geographical limitations.⁴⁵ Species protection measures encompass Member States' obligations to provide for general or strict species protection and to control the exploitation of specific species.⁴⁶

Derogations from prohibitions arising from species protection of wild birds and species of wild fauna and flora are permitted only when no alternatives exist and if they meet specific criteria, such as a risk to public health or safety, significant damage to agriculture, fisheries or forestry or for research purposes.⁴⁷

⁴⁴ A. Trouwborst, *Waking up Bats, Hazing Wolves and Draining Snake Lakes – Exploring the EU Habitats Directive's Prohibition of "Deliberate Disturbance"*, "Journal for European Environmental & Planning Law" 2023, vol. 20, no. 3–4, p. 217–235.

⁴⁵ See: H. Tegner Anker, B. Egelund Olsen, *EU Species Protection Law and Wind Energy: Current Challenges and Danish Experiences*, "European Energy and Environmental Law Review" 2023, vol. 32, no. 1, p. 36–46; H. Schoukens, K. Bastmeijer, *Species Protection in the European Union: How Strict is Strict?* in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 121–146; C. Sobotta, *The Impact of Species Protection on Land-use Planning Via the Environmental Assessment: Towards a More Proactive Approach?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 147–159; C. Sobotta, *Species Protection in the Environmental Assessment-Assembling the Puzzle*, "Journal for European Environmental & Planning Law" 2013, vol. 10, no. 3, p. 233–249; *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*, European Union Publications Office, Luxembourg 2007, p. 12, <https://publications.europa.eu/en/publication-detail/-/publication/1059d053-7082-421a-9bdc-54b2749c16c7/language-en> [access: 21.07.2025]; see judgments of the CJ: of 10 November 2016, Case C-504/14 *European Commission v Hellenic Republic*, EU:C:2016:847; of 11 January 2007, Case C-183/05, *Commission of the European Communities v Ireland*, EU:C:2007:14, para 29.

⁴⁶ E.g. judgments of the CJ: of 18 May 2006, Case C-221/04, *Commission of the European Communities v Kingdom of Spain*, EU:C:2006:329, para 71; of 30 January 2002, Case C-103/00, *Commission of the European Communities v Hellenic Republic*, EU:C:2002:60, para 32–40; see Commission notice *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive*, C/2021/7301 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=intcom:C%282021%297301> [access: 28.09.2025].

⁴⁷ Article 9 of the Birds Directive (see *Derogations from the Protection of Birds. Under the EU Birds Directive, the Bern Convention and the African-Eurasian Waterbird Agreement*, BirdLife International, Bruxelles 2020, <https://www.birdlife.org/wp-content/uploads/2022/04/report-eu-derogations-protection-birds-directive-bern-convention.pdf> [access: 19.09.2025] and Article 12 of the Habitats Directive (judgments of the CJ: of 14 June 2007, Case C-342/05, *Commission of the European Communities v Republic of Finland*, EU:C:2007:341, para 29; of 10 October 2019, Case C-674/17, *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo – Kainuu ry v Risto Mustonen and Others*, EU:C:2019:851, para 66).

The overall conservation objective, explicitly stated in the Habitats Directive, is to ensure the maintenance or restoration of these species and habitats in the EU. All forms of deliberate capture or killing in the wild are prohibited, as are disturbing or destroying breeding sites, nests or eggs and trade in wild specimens. Member States must also, where necessary, implement measures to ensure that the capture or exploitation of certain species does not hinder their favourable conservation status.⁴⁸

At the heart of both directives is the Natura 2000 network, which sets conservation objectives and legal standards for the sustainable management of sites and the reduction of damage resulting from human activities.⁴⁹ Currently, almost one fifth of the EU's land area and around 10% of its marine area are covered by the Natura 2000 network (approximately 28,000 sites), making it the largest network of protected areas in the world.⁵⁰

In 2015 the Commission conducted a "Fitness Check" of the Birds and Habitats Directives. The findings of this assessment confirm that both Directives remain highly relevant and fit for purpose.⁵¹ On the other hand, they need to be better implemented by Member States,⁵² with only 15% of habitats being in good condition, while 81% are in poor condition; moreover, 35% of species in unfavourable condition continue to decline.⁵³ As the study highlights, effective

⁴⁸ See *The Habitats Directive*, https://environment.ec.europa.eu/topics/nature-andbiodiversity/habitats-directive_en [access: 19.09.2025].

⁴⁹ C. Romao, *The Added Value of the Habitats Directive...*, p. 21–28.

⁵⁰ See also *Natura 2000 Barometer*, http://ec.europa.eu/environment/nature/natura2000/barometer/index_en.htm [access: 28.02.2025].

⁵¹ Commission Staff Working Document, Fitness check of the EU Nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Brussels, 16.12.2016, SWD(2016) 472 final, https://commission.europa.eu/system/files/2017-01/swd-2016-472-final_en.pdf [access: 19.09.2025]; *The European Environment State and Outlook 2015. Synthesis Report*, Publications Office of the European Union, Luxembourg 2015, p. 57, <https://portals.iucn.org/library/sites/library/files/documents/Co-Europe-Env-035.pdf> [access: 19.09.2025].

⁵² See A. Garcia-Ureta, I. Lazkano, *Instruments for Active Site Management Under Natura 2000: Balancing Between Stakeholders and Nature Conservation?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 71–92; L. Stahl, *The Concept of 'Conservation Objectives' in the Habitats Directive: A Need for a Better Definition?*, Routledge, London 2014, p. 56–70.

⁵³ *Habitats and Species: Latest Status and Trends*, <https://www.eea.europa.eu/en/topics/at-a-glance/nature/state-of-nature-in-europe-a-health-check/habitats-and-species-latest-status-and-trends> [access: 18.07.2025]; see also *State of Nature in the EU. Results from Reporting Under the Nature directives 2013–2018*, Publications Office of the European Union, Luxembourg 2020, p. 41, <https://www.eea.europa.eu/publications/state-of-nature-in-the-eu-2020> [access: 18.07.2025].

management, not just designation, is crucial to species' habitat recovery and climate adaptation, and for halting biodiversity loss and rebuilding natural ecosystems.⁵⁴

Due to many species and habitats having an *unfavourable* conservation status – worldwide as well as in Europe⁵⁵ – to stop or reduce biodiversity loss, it will be insufficient to only conserve what remains of biodiversity. Species and habitats need to be restored to a favourable conservation status.⁵⁶

3. Need to rethink EU nature conservation (biodiversity) law

Nature conservation has a long-standing tradition.⁵⁷ On a larger scale, the idea began to be promoted as early as the 19th century, when the primary form of protection was creating nature parks and reservations to preserve natural features and valuable landscapes.⁵⁸

Nature legislation to date has mostly been formulated from a perspective that prioritises conservation over restoration.⁵⁹ Lately, there has been an increased focus on the restoration of these elements. The recent EU regulatory framework has been identified as playing a significant role in the realm of

⁵⁴ Commission Staff Working Document, Fitness check of the EU Nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Brussels, 16.12.2016, SWD(2016) 472 final, p. 5–8, https://commission.europa.eu/system/files/2017-01/swd-2016-472-final_en.pdf [access: 18.07.2025]; M. Kovc, D. Hladni, L. Kutnar, *Biodiversity in Natura 2000 Forest Habitats is Not Static: Its Conservation Calls for an Active Management Approach*, "Journal for Nature Conservation" 2018, vol. 43, p. 250–260.

⁵⁵ E.g. S. Jen, *The Effectiveness of EU Nature Legislation: A Long Battle to Secure Supporting Sectoral Policies*, in: S. Maljean-Dubois, *The Effectiveness of Environmental Law*, Intersentia, Cambridge, 2017, p. 221–239.

⁵⁶ See e.g. M. Baran, *Towards EU Nature Restoration Law: A Boost for Biodiversity and Climate?*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework: Searching for Coherence*, Presses universitaires Saint-Louis, Bruxelles 2024, p. 113–140.

⁵⁷ G. Tucker, *Europe's Nature and Conservation Needs*, in: G. Tucker (ed.) *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Cambridge 2023, p. 25–35; G. Tucker, *Conclusions, Lessons Learnt and Implications for the Future*, in: G. Tucker (ed.) *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Cambridge 2023, p. 106–141.

⁵⁸ *Ibidem*.

⁵⁹ E.g. A. Cliquet, K. Decler, H. Schoukens, *Restoring Nature in the EU: The Only Way is Up?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 265–284.

ecological restoration, with this process being recognised as a global priority. It is asserted that the foundation of nature conservation is predicated on three overarching principles these being: (i) maintenance, (ii) sustainable use and (iii) the restoration of the resources and components of nature.⁶⁰

Whilst the field of nature conservation law has historically concentrated on local phenomena, recent developments – most likely in response to the growing body of knowledge and awareness regarding the human impact on the planet – have highlighted the necessity for a more comprehensive approach to nature conservation. It is evident that the repercussions of climate change (i.e. a crisis) serve to underscore the magnitude of humanity's impact on the planet, as well as the interconnected nature of environmental concerns; this necessitates a holistic approach to address these issues.⁶¹ This, in turn, requires a shift away from the traditional focus on only specific areas of nature conservation, a new exchange between different areas of environmental law and an interdisciplinarity that goes beyond legal knowledge.⁶²

In implementing an integrated and holistic approach to protecting natural ecosystems in Europe, as mentioned above, reconciling top-down environmental standards and objectives and local management based on spatial planning are crucial. The positive dimension (opportunity) of such action is visible in a horizontal (rather than merely sectoral) approach to nature conservation, which constitutes a “specific” emancipation of this element of the environment and emphasises the role of nature in protecting biodiversity and mitigating and adapting to ongoing climate change. A threat (negative dimension) may stem from a tendency to deepen the discrepancy between local planning practices and the (EU) level of standard-setting; this can lead to conflicts between various interests.⁶³ Furthermore, there is an intermediate level of transposition of European standards into national legislation, which often leads to additional complications.

Shifting perspectives in nature protection from sectoral to horizontal means moving from focussing on isolated aspects of nature (such as specific species or habitats) to a more holistic approach that considers the interconnectedness of all natural systems and their relationship with human activity.⁶⁴ This involves

⁶⁰ M. Biscosi, *From Natura to Nature Restoration...*, p. 149–170; E. Less, O.W. Pedersen, *Restoring the Regulated...*, p. 75–96.

⁶¹ E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction...*, p. 1–2.

⁶² Ibidem.

⁶³ M. Fermeglia, K. Pedrosa, *Planning for Citizens' Health: Towards an Integrated Approach to Air and Noise Pollution in the EU*, “Journal for European Environmental & Planning Law” 2022, vol. 19, no. 1–2, p. 9–30.

⁶⁴ E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction...*, p. 1–2; J. Penca, M. Tănăsescu, *The Transformative Potential...*, p. 643–647.

integrating ecological considerations into various sectors, recognising nature's intrinsic value and promoting sustainable practices across all levels of society.

The key differences between the sectoral and holistic approaches are that the former is narrow, often limited to specific areas (e.g. nature reserves) or species (e.g. endangered birds); often fragmented, with separate policies and institutions for different sectors (e.g. forestry,⁶⁵ agriculture⁶⁶ or fisheries⁶⁷); and primarily focusses on conservation goals, often neglecting broader ecological or societal impacts.

The opposite is the integrated approach, which is characterised by a horizontal perspective. The ecosystem-based management approach acknowledges the interconnectedness of ecosystems and aims to preserve their structural integrity, functional capacity and resilience. This approach facilitates the use of natural processes to address societal challenges, such as climate change, water management and urban development. Cross-sectoral collaboration fosters cooperation and coordination between different sectors to achieve common conservation goals and integrates ecological considerations into land-use planning to ensure sustainable development and protect valuable ecosystems.

The benefits of a horizontal perspective include:

- 1) more effective conservation in addressing the root causes of environmental degradation and promoting long-term sustainability;
- 2) increased resilience to climate change, utilising natural systems to mitigate the impacts of climate change and adapt to a changing environment;
- 3) improved human well-being by recognising the crucial role of healthy ecosystems in providing clean air, water, food and other essential resources.

⁶⁵ For example, forest management that prioritises timber production with limited consideration for biodiversity – see Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee, *New EU Forest Strategy for 2030*, COM/2021/572 final, https://commission.europa.eu/document/cf3294e1-8358-4c93-8de4-3e1503b95201_en [access: 18.07.2025].

⁶⁶ For example, agricultural activities that prioritise production volume over environmental impacts and impact on biodiversity – see I. Doussan, H. Schoukens, *Biodiversity and Agriculture...*, p. 437–451.

⁶⁷ For example, fishing activities that prioritise the quantity caught over environmental impacts and impact on biodiversity – see S. Luk, S. Gregerson, *Marine Species Protection and Management in the European Union: Who Will Save our Dolphins?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 399–416; H. Schoukens, H. Dotinga, *Natura 2000 and Fisheries...*, p. 375–398.

An integrated approach also is predicated on the objective of reducing conflicts between different sectors, promoting collaboration and finding solutions that benefit both nature and society and that enhance cultural values by recognising the cultural significance of nature and promoting its protection for future generations.

By adopting a horizontal perspective, we can move towards a more integrated, effective approach to nature protection. This approach acknowledges the interconnectedness of all natural ecosystems and promotes the promotion of a sustainable future for both humans and the environment

The evolution of EU environmental policies, such as those related to nature conservation and biodiversity has given rise to a novel dimension of tension between environmental planning and legislation. This phenomenon, evident in the context of policies related to air quality and noise standards⁶⁸, underscores the complexity of balancing environmental concerns with the need for regulatory compliance.

The efficacy of the “do not significant harm” principle and environmental legislation is contingent upon their implementation at the project level. The equilibrium of various interests, both environmental and natural, cannot disregard the repercussions of climate change and biodiversity loss; consequently, a purely sectoral approach would be incompatible with the ongoing changes and the requisite legal response to them.

4. Deficiencies in the European legal framework for protecting natural ecosystems

The natural ecosystems in Europe have declined and disappeared despite the EU’s existing nature conservation laws. In the context of this “failure”, the criticism is directed at the existing regulations on nature protection (mainly the Habitats Directive and the Birds Directive).⁶⁹ The shortcomings of the existing legislation are indicated, as is the problem of effectively enforcing and applying the current legal instruments.⁷⁰

⁶⁸ Report from the Commission to the European Parliament and the Council, *On the Implementation of the Environmental Noise Directive*, COM/2017/151 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0151> [access: 18.07.2025].

⁶⁹ N. Hoek, *A Critical Analysis of the Proposed EU Regulation on Nature Restoration: Have the Problems Been Resolved?*, “European Energy and Environmental Law Review” 2022, vol. 31, no. 5, p. 320–333; *The EU Nature Restoration Law: Providing Legal Certainty in Tackling the Biodiversity and Climate Crisis*, <https://chapter.ser.org/europe/> [access: 18.07.2025].

⁷⁰ M. Baran, *Towards EU Nature Restoration Law...*, p. 113–140.

In the context of EU nature conservation law, the restoration of natural resources is considered to be responsibility of Member States, as outlined in the mandatory provisions. However, significant challenges have been identified in the implementation of these obligations.⁷¹ There are both inadequacies⁷² in the existing regulations (e.g. lack of clear or binding targets and deadlines and definitions or criteria for the restoration or sustainable use of natural ecosystems) and sizeable areas of natural resource restoration issues which are as yet unregulated by EU law. These circumstances significantly impede the restoration and maintenance of natural ecosystems in Europe. Finally, the existing provisions of EU law do not require Member States to develop plans that are comprehensive and consistent with other environmental regulations or biodiversity restoration plans.

4.1. Moving away from a sectoral concept of nature conservation to a holistic approach, from the Habitats Directive and the Birds Directive to EU climate law and EU restoration law

One of the basic legal acts of the European Green Deal is Regulation 2021/1119 establishing the framework for achieving climate neutrality (European Climate Law).⁷³ It writes into law the goal for Europe's economy and society to become climate neutral by 2050. The law also sets the intermediate target of reducing net greenhouse gas (GHG) emissions by at least 55% by 2030, compared to 1990 levels.⁷⁴ The main objectives of the European Climate Law are: (i) meeting the 2050 climate neutrality objective through all policies, in a socially fair and cost-efficient manner, (ii) creating a system for monitoring

⁷¹ Ibidem; M. Biscosi, *From Natura to Nature Restoration...*, p. 149–170.

⁷² M. Baran, *Towards EU Nature Restoration Law...*, p. 113–140

⁷³ 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 (European Climate Law), OJ L 243, 9.07.2021, p. 1–17. See e.g.: K. Kulovesi, S. Oberthür, H. van Asselt, A. Savaresi, *The European Climate Law: Strengthening EU Procedural Climate Governance?*, "Journal of Environmental Law" 2024, vol. 36, no. 1, p. 23–42; see also: L. Fisher, *Challenges for the EU Climate Change Regime*, "German Law Journal" 2020, vol. 21, no. 1, p. 5–9; M. Peeters, *EU Climate Law: Largely Uncharted Legal Territory*, "Climate Law" 2019, vol. 9, no. 1–22, p. 137–147; B. Pérez de las Heras, *European Climate Law(s): Assessing the Legal Path to Climate Neutrality*, "Romanian Journal of European Affairs" 2021, vol. 21, no. 1, p. 19 et seq. Climate neutrality by 2050 means achieving net-zero GHG emissions for EU Member States as a whole, mainly by cutting emissions, investing in clean technologies and protecting the environment; see also *2050 Long-term Strategy. Striving to Become the World's First Climate-neutral Continent by 2050*, https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2050-long-term-strategy_en [access: 18.07.2025].

⁷⁴ Article 4(1) European Climate Law.

progress and taking further action if needed and (iii) ensuring that the transition to climate neutrality is irreversible.⁷⁵

The European Climate Law sets a legally binding target of net-zero GHG emissions by 2050. The EU institutions and the Member States are bound to take the necessary measures at the EU and national levels to meet the target, considering the importance of promoting fairness and solidarity among the Member States.

Although EU nature conservation legislation and the Birds and Habitats Directives do not refer explicitly to climate change in their texts, there is no doubt that there are many connections and interdependencies between climate protection and the protection of nature and biodiversity.⁷⁶

Regarding nature (ecosystem) and biodiversity protection, recital 32 of the European Climate Law states:

Ecosystems, people and economies in all regions of the Union will face major impacts from climate change, such as extreme heat, floods, droughts, water scarcity, sea level rise, thawing glaciers, forest fires, windthrows and agricultural losses. Recent extreme events have already had substantial impacts on ecosystems, affecting carbon sequestration and storage capacities of forest and agricultural land. Enhancing adaptive capacities and resilience, taking into account the United Nations Sustainable Development Goals, help to minimise climate change impacts, to address unavoidable impacts in a socially balanced manner and to improve living conditions in impacted areas. Preparing early for such impacts is cost-effective and can also bring considerable co-benefits for ecosystems, health and the economy. Nature-based solutions, in particular, can benefit climate change mitigation, adaptation and biodiversity protection.⁷⁷

⁷⁵ S. Oberthür, I. von Homeyer, *From Emissions Trading to the European Green Deal: The Evolution of the Climate Policy Mix and Climate Policy Integration in the EU*, "Journal of European Public Policy" 2023, vol. 30, no. 2, p. 1–24; W.M. Lafferty, E. Hovden, *Environmental Policy Integration: Towards an Analytical Framework*, "Environmental Politics" 2003, vol. 12, no. 3, p. 1–22; D. Bechtel, *The New EU Climate Law: Symbolic Law or New Governance Framework*, <https://verfassungsblog.de/the-new-eu-climate-law/> [accessed: 18 July 2025].

⁷⁶ A. Cliquet, *Linkages Between Biodiversity and Climate Change...*, p. 17 et seq.; for an analysis, see A. Trouwborst, *The Habitats Directive and Climate Change: Is the Law Climate Proof?*, in: C. Born, A. Cliquet, H. Schoukens, D. Misonne, G. van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2014, p. 303–324.

⁷⁷ See also recital 23 of the European Climate Law: "The restoration of ecosystems would assist in maintaining, managing and enhancing natural sinks and promote biodiversity while fighting climate change. Furthermore, the 'triple role' of forests, namely, as carbon sinks, storage and substitution, contributes to the reduction of greenhouse gases in the atmosphere, while ensuring that forests continue to grow and provide many other services".

This underscores the necessity for a comprehensive and integrative strategy that encompasses not only climate protection but also nature and biodiversity conservation. Moreover, the interdependence of climate protection, nature conservation and biodiversity conservation is evident. Biodiversity and climate change are linked, as identified by Cliquet, in at least in three ways: (i) biodiversity helps to mitigate climate change, through carbon sinks; (ii) it helps people adapt to the impact of climate change; and (iii) it is under threat from climate change, and needs to become more resilient.^{78, 79}

4.2. EU Nature Restoration Law as an example of a holistic approach to nature (biodiversity) protection

The EU's Regulation 2024/1991 on nature restoration (the Nature Restoration Law)⁸⁰ is an example of a holistic approach to nature protection because it integrates biodiversity conservation with other environmental and social goals.⁸¹ The present initiative represents an advance on conventional conservation efforts insofar as it focuses on the restoration of degraded ecosystems across a variety of terrestrial and maritime environments, including agricultural, urban, and marine areas.⁸² The objective of the Regulation is threefold: firstly, to enhance biodiversity; secondly, to mitigate climate change; and thirdly, to improve human well-being through nature-based solutions.⁸³ According to its Art. 3(3), restoration means:

the process of actively or passively assisting the recovery of an ecosystem in order to improve its structure and functions, with the aim of conserving or enhancing biodiversity and ecosystem resilience, through improving an area of a habitat type to good condition, re-establishing favourable reference area, and improving a habitat of a species to sufficient quality and quantity (...), and meeting the targets and ful-

⁷⁸ A. Cliquet, *Linkages Between Biodiversity and Climate Change...*, p. 17.

⁷⁹ E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction...*, p. 1–2.

⁸⁰ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869, OJ L 2024/1991, 29.07.2024.

⁸¹ J. Penca, M. Tănăsescu, *The Transformative Potential...*, p. 643–647; E. Less, O.W. Pedersen, *Restoring the Regulated...*, p. 75–96; E. Chiti, *Ecosystem Restoration and EU Law: An Introduction to the Symposium*, “European Law Open” 2024, vol. 3, no. 1, p. 175–179; M. Petersmann, *Reordering the European Ground-Regrounding the European Legal Order?*, “European Law Open” 2024 vol. 3, no. 1, p. 180–189.

⁸² See Articles 4, 5 and Articles 8–12 of the Nature Restoration Law.

⁸³ Article 1 of the Nature Restoration Law.

filling the obligations under Articles 8 to 12, including reaching satisfactory levels for the indicators referred to in Articles 8 to 12.⁸⁴

The holistic approach in the Nature Restoration Law recognises that biodiversity conservation is not a standalone issue, but rather an integral part of broader environmental and societal objectives.⁸⁵ The overarching aim of the initiative is to establish a future for the European Union that is characterised by enhanced resilience and sustainability. The strategy to achieve this is the restoration and protection of its natural ecosystems.⁸⁶

The fundamental goals of the EU's Nature Restoration Law are to ensure that Member States take significant steps towards restoring natural resources and enhancing biodiversity. To achieve this, the Regulation 2024/1991 formulates a series of obligations addressed to Member States which are divided into two groups. The first category is substantive, concerning practical actions to ensure the restoration of natural resources and biodiversity.⁸⁷ The second category is formal, concerning Member States' development and implementation of national restoration plans.⁸⁸

Regulation 2024/1991 is considered to follow a holistic approach due to the extensive scope that characterises it. The law is concerned with a broad spectrum of ecosystems, encompassing forests, wetlands, agricultural land, urban areas and marine environments – and recognises the interconnectedness of these systems.⁸⁹ In the domain of the Nature Restoration Law, there is an observable paradigm shift “from traditional ‘command and control’ regulation towards

⁸⁴ On the notion of restoration in general see: A. Telesetsky, A. Cliquet, A. Akhtar-Khavari, *Ecological Restoration in International Environmental Law*, Routledge, London 2017; S.K. Allison, S.D. Murphy (eds), *Routledge Handbook of Ecological and Environmental Restoration*, Routledge, London 2017.

⁸⁵ E. Less, O.W. Pedersen, *Restoring the Regulated...*, p. 94.

⁸⁶ See E. Morgera, *The Trajectory of EU Biodiversity Cooperation: Supporting Environmental Multilateralism through EU External Action*, in: E. Morgera (ed.), *The External Environmental Policy of the European Union*, Cambridge University Press, Cambridge 2012, p. 235 et seq.

⁸⁷ The substantive obligations are contained in Chapter II of the Nature Restoration Law, with the broadest scope of obligations being found in Article 4 on terrestrial, coastal and freshwater ecosystems and Article 5 on marine areas; see E. Less, O.W. Pedersen, *Restoring the Regulated ...*, p. 81–88; B.J. de Leeuw, C. Backes, *The Non-Deterioration Obligation in the Nature Restoration Regulation – a Necessary and Proportionate Addition to the Habitats Directive or a Monstrosity with Disastrous Consequences for Society?*, “Journal for European Environmental & Planning Law” 2024, vol. 21, no. 1, p. 22–40.

⁸⁸ E. Less, O.W. Pedersen, *Restoring the Regulated ...*, p. 94–95.

⁸⁹ *Ibidem*, p. 80.

less rigid, less structured and less prescriptive modes of regulation”.⁹⁰ This transition is accompanied by the adoption of a holistic approach to the method of regulation. The Regulation 2024/1991 links biodiversity conservation with climate change mitigation and adaptation, recognising that healthy ecosystems play a crucial role in carbon sequestration and reducing the impacts of extreme weather events.⁹¹ Another aspect of this holistic perspective is focussing on ecosystem services.⁹² The Regulation 2024/1991 acknowledges the importance of ecosystem services, such as water filtration, pollination and flood control, which are essential for human well-being and economic activity.⁹³ The Nature Restoration Law sets legally binding restoration targets for Member States, requiring them to develop national restoration plans and to implement specific measures to achieve these targets.⁹⁴ The Regulation 2024/1991 provisions encompass the establishment of mechanisms for monitoring progress towards restoration targets and reporting on the effectiveness of any implemented measures.⁹⁵

5. Conclusion

It is imperative that greater integration of existing legal instruments is effected in order to arrest the deleterious trends in the state of the quality of natural ecosystems and the loss of biodiversity in the EU. Moreover, the adoption of new legal solutions (a new legal instrument) covering nature protection (biodiversity) was essential. What is needed is better integration of existing legal instruments to stop the negative trends in the state of natural ecosystems and the loss of biodiversity in the EU, as well as new legal solutions (a new legal instrument) covering the restoration of natural resources in Europe.

The prevailing environmental crisis has become deeply entrenched in our day-to-day lives, necessitating the development of a legal framework that can effectively address these intersecting issues. The connections between these issues are numerous and diverse, including but not limited to climate and land use, food security and energy, waste and marine protection, trade and biodiversity. They must also acknowledge the importance of conflict as a source of

⁹⁰ Ibidem.

⁹¹ Recitals 1, 16–19, 47 and Article 1(1) of the Nature Restoration Law.

⁹² Recitals 3–5, 14–17 and 47–48 of the Nature Restoration Law.

⁹³ Ibidem.

⁹⁴ Chapter III, Articles 14–19 of the Nature Restoration Law.

⁹⁵ Articles 20–21 of the Nature Restoration Law.

legal imagination, and as an expression of the complexity of the intertwined network of life and technology in the Anthropocene.

A fundamental rethinking of environmental law is imperative to address the challenges posed by the intricate structure of the biosphere and the pervasive human footprint on it. The existing legislation pertaining to nature protection (biodiversity) must undergo a process of re-examination, with a view to addressing the challenges that are presented by the intricate structure of the biosphere, the pervasive impact of human activity on it, and the requirement to ensure more effective protection and restoration of biodiversity. It entails the need for a more holistic approach to nature protection (biodiversity): not only prohibitions, but more proactive strategies. The adoption of EU (ecosystem) legislation should be seen as indicative of a growing awareness that the prevailing approach to ecosystem protection is inadequate.

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