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Biodiversity protection in the EU: Legal framework, challenges and opportunities

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Table of Contents:

I. INTRODUCTION 5

II. PART 1: THE LEGAL NEXUS BETWEEN EU BIODIVERSITY PROTECTION AND THE EU COMMON AGRICULTURAL POLICY 7

CHAPTER A: THE LEGAL DIMENSIONS OF EU BIODIVERSITY PROTECTION 7

1. THE EU'S MANDATE TO PROTECT BIODIVERSITY 7

a) Allocation of competences for biodiversity protection in the EU 7

b) EU´s objective-setting in the realm of biodiversity protection 11

aa. The EU's objective-setting for biodiversity protection within the context of the international legal framework 11

bb. The EU's Objective-Setting in the 2030 Biodiversity Strategy 13

2. LEGAL INSTRUMENTS AND GOVERNANCE IN THE EU BIODIVERSITY PROTECTION 16

a) EU's Legal Mechanisms for Biodiversity Protection 16

aa. The regulatory framework of the Natura 2000 network 16

bb. The new approach in the framework of the Nature Restoration Regulation 20

b) EU´s Governance Mechanisms for Nature Restoration 24

aa) Governance Framework under the EU Nature Directives 25

bb) Governance Structure in the EU Nature Restoration Regulation 27

CHAPTER B: THE EU COMMON AGRICULTURAL POLICY´S (CAP) CONTRIBUTION TO BIODIVERSITY PROTECTION 30

1. BIODIVERSITY PROTECTION IN THE EU LEGAL FRAMEWORK OF THE CAP 31

a) Objectives in the CAP related to biodiversity protection 31

aa) Agricultural policy objectives in EU primary law 31

bb) Biodiversity Protection Objective in the CAP 2023-2027 33

b) Instruments for enhancing biodiversity under the CAP 2023-2027 35

aa) The instrument of 'enhanced conditionality' 36

bb) The CAP´s voluntary instruments for enhanced biodiversity 38

2. THE INTERPLAY BETWEEN CAP STRATEGIC PLANS AND NATIONAL RESTORATION PLANS 40

a) Harmonising Biodiversity Measures in the CAP Strategic Plan and Nature Restoration Plan 40

b) Funding conflict between CAP Strategic Plans and National Restoration Plans 41

III. PART 2: LEGAL ENFORCEMENT MECHANISM FOR EU BIODIVERSITY LEGISLATION 42

CHAPTER A: PRIVATE AND PUBLIC ENFORCEMENT OF EU BIODIVERSITY LEGISLATION 42

1. THE ROLE OF NATIONAL COURTS IN PRIVATE ENFORCEMENT OF EU BIODIVERSITY LEGISLATION 42

a) National court´s consistent interpretation regarding EU Nature Directives 43

b) Requesting preliminary rulings in the field of EU biodiversity laws 44

2. THE ROLE OF THE EU COMMISSION IN PUBLIC ENFORCEMENT OF EU BIODIVERSITY LEGISLATION 47

a) The EU Commission's pathways to enforce biodiversity legislation 47

b) Aspects in infringement judgments regarding biodiversity protection cases 50

CHAPTER B: PROCEDURAL PATHWAYS FOR PRIVATE ENFORCEMENT OF EU BIODIVERSITY LEGISLATION 52

1. ACCESS TO INFORMATION IN THE CONTEXT OF BIODIVERSITY PROTECTION 52

2. ACCESS TO JUSTICE IN CONTEXT OF BIODIVERSITY PROTECTION 53

IV. CONCLUSION 55

I. Introduction

Nature and wildlife are threatened worldwide. Since the beginning of the industrial revolution, humans have been significantly interfering in the natural environment - especially through land use changes and burning fossil fuels.[1] This does not happen without consequences. According to an UN report from 2019, 1 million of the estimated 8 million species around the world are likely to face extinction in the coming decades.[2] Some scientists consider this event as part of the sixth mass extinction in Earth's history comparable to earlier ones that destroyed 60% to 95% of species and it took millions of years for ecosystems to recover.[3] The issue at stake is referred to as biological diversity, which is defined in Art. 2 of the Convention on Biological Diversity[4] as '*the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part.'* It has been found that it is essential to maintain the interconnectedness and relationships between different species in natural systems. That is because ecosystems play a fundamental role in supporting human life, offering resources like food, clean water, and medicines, while also helping to prevent flooding and mitigate extreme weather impacts.[5] In this respect, the ongoing biodiversity loss can be considered as equally devastating as the closely connected climate change.[6] Already in 2018, the former Executive Secretary of the UN Biodiversity Convention Cristiana Pasca summed it up as follows: *'Biodiversity loss is a silent killer. It is not doing anything to us today or tomorrow but it is affecting the composition of the whole infrastructure that supports life on earth.*'[7]

There are also many rare habitats and species in Europe, whereby according to the current State of Nature Report from 2020, only 15% of habitats and 27% of protected species are in a good conservation status.[8] Insofar, the earlier efforts by the EU were insufficient by means of the long-standing EU Nature Directives - namely the Wild Birds Directive (1979)[9] and the Habitats Directive (1992)[10] - which to this day form the Natura 2000 network consisting of over 27,000

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[1] Tim Benton and Jon Wallace, '*Threats to biodiversity'* (2023) Chatham House, available at: https://www.chathamhouse.org/2023/04/threats-biodiversity (accessed 30 Sep 2024).

[2] United Nations, '*World is "on notice" as major UN report shows one million species face extinction'* (2019) UN News, available at: https://news.un.org/en/story/2019/05/1037941 (accessed 30 Sep 2024).

[3] European Parliament, '*Biodiversity loss: what is causing it and why is it a concern?'* (2020) Topics, available at: https://www.europarl.europa.eu/topics/en/article/20200109STO69929/biodiversity-loss-what-is-causing-it-and-why-is-it-a-concern (accessed 30 Sep 2024).

[4] Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, as implemented by Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity [1993] OJ L309/1.

[5] NSW Government, '*What is biodiversity and why is it important?'* (2023) Biodiversity Conservation Trust, available at: https://www.bct.nsw.gov.au/what-biodiversity-and-why-it-important (accessed 30 Sep 2024).

[6] Natural History Museum, '*How are climate change and biodiversity loss linked?'* (2022), available at: https://www.nhm.ac.uk/discover/how-are-climate-change-and-biodiversity-loss-linked.html (accessed 30 Sep 2024).

[7] AhramOnline, '*Biodiversity loss threatens human existence on earth: UN chief'* (2018), available at: https://english.ahram.org.eg/News/317856.aspx (accessed 30 Sep 2024).

[8] European Environment Agency, *'State of nature in the EU: Results from reporting under the nature directives 2013-2018'* (2020), p. 2, available at: https://www.eea.europa.eu/publications/state-of-nature-in-the-eu-2020 (accessed 15 Sep 2024).

[9] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2010] OJ L20/7.

[10] Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7, as amended by Council Directive 2013/17/EU of 13 May 2013 [2013] OJ L158/193.

protected areas across the EU.[11] As such, the EU Commission responded promptly as part of its Green Deal policy in May 2020 with the publication of the Biodiversity Strategy for 2030.[12] The strategy identifies the five main drivers of biodiversity loss - changes in land and sea use, overexploitation, climate change, pollution, and invasive alien species - that must be addressed and focusses on a shift from *conservation* to *restoration* of ecosystems with a comprehensive EU Nature Restoration Plan. To date, the greatest achievement of the Biodiversity Strategy is the new EU Nature Restoration Regulation (EU) 2024/1991,[13] which came into force on 18 August 2024. This landmark piece of EU legislation aims to tackle the weaknesses of the EU Nature Directives through a holistic approach, addressing all ecosystems across the EU with clearly defined restoration targets by 2030, 2040 and 2050. The functioning of the Regulation is thoroughly examined in **Part 1 - Chapter A**, focusing on the governance framework and the new implementation instrument - the so-called national restoration plan of the Member States.
Human activities across various sectors are driving significant threats to biodiversity in the EU, contributing to habitat loss, environmental degradation, and the disruption of ecosystems. Among all sectors, agriculture plays a significant role in amplifying each of the aforementioned five main drivers of biodiversity loss. With land abandonment and the adoption of more intensive, mechanized, and chemically based farming production techniques,[14] the EU farming policy, the Common Agricultural Policy (CAP), has decisively triggered the ongoing trend of biodiversity loss. From an EU law perspective, the legal acts stemming from the CAP build an exceptional and compartmentalised realm,[15] which makes it worth to take a closer look at the CAP´s approach to biodiversity conservation measures – especially, regarding the incorporation of increasing environmental ambitions in the new CAP reform for 2023-2027. Insofar, **Part 1 - Chapter B** examines the CAP with a particular focus on its objectives under the Treaties and the CAP 2023-2027. In this context, the three main instruments of the new CAP, which aim to promote a more sustainable and green agriculture, are explored - namely, 'enhanced conditionality,' the new eco-schemes, and agri-environment-climate measures (AECM). In addition, the interplay between the new instruments of the CAP Strategic Plans and National Restoration Plans is being elaborated.
Together, both Chapters of Part 1 leads to the following first research question: How does the EU legal framework for biodiversity protection operate in interaction with the EU Agricultural Policy (CAP)?

Furthermore, **Part 2** goes a step further and examines how EU biodiversity legislation is legally enforced. It should be already noted that two strands of enforcement exist. As such, **Chapter**

[11] European Environment Agency, '*Natura 2000 sites designated under EU Habitats and Birds Directive'* (2021), available at: https://www.eea.europa.eu/en/analysis/indicators/natura-2000-sites-designated-under (accessed 30 Sep 2023).
[12] European Commission, 'EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives' COM [2020] 380 final.
[13] Regulation (EU) 2024/1991 of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 [2024] OJ L178/1.
[14] Lou Lécuyer and others, '*Conflicts between agriculture and biodiversity conservation in Europe: Looking to the future by learning from the past'* (2021) Advances in Ecological Research 65, 3-56(4), available at: https://www.sciencedirect.com/science/article/pii/S0065250421000209?via%3Dihub (accessed 19 Sep 2024).
[15] Sarah Martin and Lara Fornabaio, *'The Special Status of Agriculture – Why is the CAP an exceptional policy?'* (2021) ClientEarth, available at: https://www.clientearth.org/media/rhdfzkav/the-special-status-of-agriculture-why-is-the-cap-an-exceptional-policy.pdf?utm_source=chatgpt.com (accessed 30 Sept 2024).

A encompasses on the one hand the private legal enforcement model, which is based on the principle of the '*vigilance of individuals*.' In particular, the focus is directed towards the role of national courts and the means of the preliminary reference procedure as an EU integration engine. On the other hand, the public legal enforcement activities of the Commission, the so-called 'guardian of the Treaties,' in the field of biodiversity legislation is evaluated. Additionally, **Chapter B** explains the procedural pathways for private legal enforcement of EU biodiversity legislation, which is shaped by the Aarhus Convention.
Finally, **Part 2** forms the following second research question: How can both the public and private enforcement of EU legislation contribute to an effective achievement of the EU biodiversity protection objectives?

II. Part 1: The legal nexus between EU biodiversity protection and the EU Common Agricultural Policy

Chapter A: The Legal Dimensions of EU Biodiversity Protection

1. The EU's mandate to protect biodiversity

a) Allocation of competences for biodiversity protection in the EU

Analyzing the legal framework regarding the EU biodiversity protection, it should first be clarified on which legal basis the Union operates in order to adopt measures in this area. Due to the principle of conferral, laid down in Art. 5(2) TEU,[16] according to which the EU may only act within the limits of the competences conferred upon it by the Member States,[17] it should first be examined how the policy of biodiversity protection can be linked to the distribution of competences between the EU and the Member States by means of its three different categories of competences.
Under Title I '*Categories and Areas of Union Competences,*' of the Treaty on the Functioning of the European Union (TFEU),[18] it is identified in which policy areas the EU is able to act, yet it is not directly apparent which area biodiversity protection aligns with. With regard to nature conservation, the catalogue of exclusive competences in Art. 3 TFEU only refers in Art. 3(1)(d) TFEU to the area of conservation of marine biological resources, which is part of the common fisheries policy. Therefore, the focus falls on the EU policy area of environment, which is subject to shared competence according to Art. 4(2)(e) TFEU.
What is remarkable is that the term '*environment*' is not defined neither in the EU Treaties nor in EU secondary law[19] so that a topical link between the general concept of environment and biodiversity protection must first be established. Even in the General Union Environment Action Programmes based on Art. 192(3) TFEU - most recently in the 8th General Union

[16] Consolidated Version of the Treaty on European Union [2008] OJ C115/13.
[17] Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford Academic 2019), Art. 5 TEU, para 12, available at: https://academic.oup.com/book/41771/chapter/354433206 (accessed 12 Aug 2024).
[18] Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C115/47.
[19] Christian Calliess and Matthias Ruffert (eds), *EUV/AEUV: Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta* (CH Beck, 6th ed 2022) Art 191 AEUV para 11.

Environment Action Programme until 2030[20] - there is no definition of the term 'environment'. An approach to determining the concept of environment can be solved by summarising the protected legal interests in the area of EU environmental law.[21] Insofar, within the framework of the Directive on the assessment of the effects of certain public and private projects on the environment,[22] Art. 3 of this Directive lists direct and indirect factors that are taken into account in the case-by-case assessment of a project - including human beings, fauna and flora. These protective factors are explicitly addressed by biodiversity protection measures such as undertaking restoration of ecosystems[23] so that it can be stated that biodiversity protection is a policy falling under the term 'environment' according to Art. 4(1)(e) TFEU.
Taking into account the respective shared competence, it should be noted according to Art. 2(2) TFEU that both the Union and the Member States are able to legislate and adopt legally binding acts in that area, but Member States may only exercise this competence as long as and to the extent that the Union has not done so. While the EU is able to overrule Member States' existing legislation and preempt future legislation in the field of environmental policy, such power is nonetheless restricted by the principles of subsidiarity, Art. 5(3) TEU and proportionality, Art. 5(4) TEU.[24] In order to achieve the highest possible degree of decentralization, the principle of subsidiarity in Article 5(3) TEU requires that the Union may act only if its objectives cannot be sufficiently achieved by the Member States, whether at central, regional, or local levels. Instead, if the objectives can be better achieved at the Union level due to '*the scale or effects,*' then Union action is needed.[25] There are consequently two criteria that must be met for the Union to take action. The first one is a negative criterion asking whether the Member State cannot sufficiently achieve the objective. Referring to the objectives of environmental protection in Art. 191 TFEU, this criterion is fulfilled if an environmental issue exists in one or more Member States without being properly handled by the responsible authorities.[26] In terms of biodiversity protection it is remarkable that Member States fail to provide public funding in the field of nature restoration and conservation at a national level. In addition, it can be noted that, in some Member States, there is a general lack of ambition for long-term conservation actions due to bureaucratic requirements for reporting conditions.[27] More specifically, biodiversity

[20] Decision (EU) 2022/591 of the European Parliament and the Council of 6 April 2022, on a General Union Environment Action Programme to 2030, OJ. EU L114/22.
[21] (n 1) *Ibid.*
[22] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment [2011] OJ L26/1.
[23] Maria Magdalena Kenig-Witkowska, 'The EU Biodiversity Strategy for 2030: Building Nature Resilience in the Wake of the post pandemic Covid-19 Socio-economic Recovery' (2022), Studia Iuridica 91 available under: https://studiaiuridica.pl/article/160879/en (accessed 11 Aug 2024).
[24] Josephine van Zeben, *'Subsidiarity in European Environmental Law: A Competence Allocation Approach'* (2014) 38 Harv Envtl L Rev 415-464 (428), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2791617 (accessed 2 Sep 2024).
[25] *Ibid* 418.
[26] Sian Affolter, '*The Subsidiarity Principle in EU Environmental Law'* (2021) in Günter Walzenbach and Ralf Alleweldt 'Varieties of European Subsidiarity: A Multidisciplinary Approach'(E-International Relations, 2021) 79-90(81), available at: https://www.e-ir.info/2021/03/26/the-subsidiarity-principle-in-eu-environmental-law/ (accessed 3 Sep 2024).
[27] CEE Bankwatch Network, '*Biodiversity on the brink: What's holding back financing for nature'* (2022), available at: https://bankwatch.org/blog/biodiversity-on-the-brink-what-s-holding-back-financing-for-nature (accessed 3 Sep 2024).

monitoring methods are fragmented within EU Member States until today and facing multiple challenges including data unavailability and lack of long-term policy support.[28]

The second criterion for the subsidiarity principle builds a positive requirement asking if the objective can be better achieved at Union level. Insofar, a case-by-case evaluation is required to ascertain whether the EU can better attain the objective due to the scale or the effects of the action.[29] This raises the question of whether biodiversity protection measures would be more effectively achieved by Member States with their regional and local authorities. In this respect, reference can be made to the former president of the International Union for Conservation of Nature, who came to the conclusion that '*if the local population does not support protected areas, then protected areas cannot last'*.[30] In this regard, the 8th General Union Environment Action Programme to 2030 which aims to protect, restore and improve the state of the environment by halting and reversing biodiversity loss, understands environment policy as highly decentralized so that actions should be conducted by means of an integrated approach at Union, national, regional and local levels.[31] The subsidiarity principle in the area of biodiversity protection is also reflected in the objectives of the EU's environmental policy, laid down in in Art. 191(2) TFEU, which postulates a '*high level of protection taking into account the diversity of situations in the various regions of the Union*.' Considering the various regions highlights the fact that main decisions in in the hierarchy of legal sources shift from the top down.[32] On the other hand, it can be considered that actions regarding environmental problems which have trans-boundary effects fulfil the positive criterion.[33]

The large scope of biodiversity protection which calls for coordinated actions on Union level is best reflected in the recitals of both the EU`s Wild Birds[34] and Habitats Directive[35] (the 'EU Nature Directives') which are the basis of the Natura 2000 network of protected areas. Insofar, recital 4 of the Wild Birds Directive perceives an effective bird protection as '*a typical trans-frontier environment problem entailing common responsibilities*.'[36] In particular, in cases of migratory species, it is crucial to coordinate preservation and restoration measures '*with a view to setting up a coherent whole*.'[37] Furthermore, although the Habitats Directive emphasises at the very beginning to take account of economic, social, cultural and regional in the maintenance of biodiversity,[38] it also refers to trans-boundary threats of habitats and species, which form part of the Community's natural heritage.[39] Furthermore, it is clarified, that the Union is better placed to bear an excessive financial burden that an individual Member State may face in taking

[28] International Institute for Applied Systems Analysis, '*The future of biodiversity monitoring in Europe'* (2023), available at: https://iiasa.ac.at/policy-briefs/mar-2023/future-of-biodiversity-monitoring-in-europe (accessed 3 Sep 2024).
[29] (n 11) p. 87.
[30] Juliette C Young and others, '*Does stakeholder involvement really benefit biodiversity conservation?*' (2013) Biological Conservation 158, 359-370 (360), available at: https://www.sciencedirect.com/science/article/pii/S0006320712003734?via%3Dihub (accessed 2 Sep 2024).
[31] Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 [2022] OJ L114/22 Recital 35.
[32] (n 4) Art. 191 para 25
[33] (n 14) *Ibid.*
[34] (n 9)
[35] (n 10)
[36] (n 9) Recital 4.
[37] *Ibid* Recital 8.
[38] (n 10) Recital 3.
[39] *Ibid* Recital 4.

certain measures in favour of the conservation of priority natural habitats and priority species of Community interest.[40] Therefore, based on the subsidiarity principle in Art. 5(3) TEU, action by the Union in the area of biodiversity protection is justified for the reasons outlined above. However, it should be borne in mind that the EU Nature Directives only set a minimum standard of protection for the Member States, as can be drawn from Art. 14 of the Wild Birds Directive and Art. 193 TFEU. The later Treaty provision shows that the EU legal framework does not seek to create a complete harmonisation in the field of environmental protection.[41] Thus, Member States are not prevented from maintaining or introducing more stringent biodiversity protection measures. Furthermore, in the new EU Nature Restoration Regulation (EU) 2024/1991[42], which came into force on 18 August 2024, it is already clear from the wording that Member States can set stricter and more ambitious protection requirements, since Art. 4(1) requires restoration measures by 2030 on *at least* 30 % of the total area of all habitat types, by 2040 on *at least* 60 % and by 2050, on at least 90 %.

Regarding the explicit competence title, the first existing EU legal instrument on biodiversity protection, the Wild Birds Directive 79/409/EEC, was based on the so-called flexibility clause – now laid down in Art. 352 TFEU.[43] Nowadays, such actions are adopted under Art. 192(1) TFEU in accordance with the ordinary legislative procedure laid down in Art. 289, 294 TFEU. Insofar, Union actions can only be taken in order to achieve the EU environmental protection objectives concretised in Art. 191(1) TFEU.[44] Remarkably, Art. 192(1) TFEU does not only serve as a basis for substantive legal measures for biodiversity protection, but also for financial instruments that provide respective funds[45] such as the EU LIFE Programme incorporated in the Regulation (EU) 2021/783.[46]

Lastly, it should be added that the Union has treaty-making power according to Art. 216(1) TFEU which means that the EU is able to conclude international agreements using the competence regarding the cases where the Treaties so provide. In the field of environmental protection, Art. 191(4) TFEU provides the EU with explicit external competences. However, most of the international agreements in this regard are based on Art. 192(1) TFEU,[47] including the Council Decision concerning the conclusion of the Convention on Biological Diversity in biodiversity protection matters.[48]

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[40] *Ibid* Recital 11.
[41] Case C-2/10 Franchini sarl and Eolica di Altamura Srl v Regione Puglia [2011] ECLI:EU:C:2011:502, para 48.
[42] (n 12).
[43] Gerd Van Calster and Leonie Reins, *EU Environmental Law* (Edward Elgar Publishing, 1th ed 2017) p. 2.
[44] (n 2) Art. 192 para 1.
[45] Eberhard Grabitz, Meinhard Hilf and Martin Nettesheim (eds), *Das Recht der Europäischen Union – Band 1: EUV/AEUV* (CH Beck, 82th ed 2024) Art. 192 AEUV para 15.
[46] Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE), and repealing Regulation (EU) No 1293/2013 [2021] OJ L172/53.
[47] (n 2) Art. 191 para 20.
[48] Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity [1993] OJ L309/1.

b) EU´s objective-setting in the realm of biodiversity protection

aa. The EU's objective-setting for biodiversity protection within the context of the international legal framework

In order to explain from a legal perspective why the EU has been steadily gaining prominence as a norm shaper in the realm of biodiversity protection both internationally and for the Member States,[49] it is pivotal to grasp on the one hand the EU Treaty objectives and on the other hand the objectives postulated in EU´s strategy documents.
Starting with the EU environmental objectives listed in Art. 191(1) TFEU, it is apparent that the first mentioned objective in Art. 191(1)(a) TFEU is '*preserving, protecting and improving the quality of the environment'* Although the objective of preserving the environment can be interpreted as maintaining the current state of the environment and the population of organisms, it should not be understood to imply that existing environmental damage should also be preserved.[50] This conclusion can be taken from the postulation to improve the quality of the environment which includes restoring degraded ecosystems and sustainably manage them.[51] The aim to work for **'***a high level of protection and improvement of the quality of the environment'* is insofar included in the general Union´s objectives in Art. 3(3) TEU.
Based on that aforementioned comprehensive mandate for EU environmental protection, the EU's role on the international stage in the area of biodiversity protection must be addressed. In this respect, according to Art. 3(5) TEU, the EU shall contribute to the sustainable development of the earth, which is further concretised by Union´s guiding principles for external actions in Art. 21(2)(f) TEU stipulating the development of international measures to preserve and improve the quality of the environment and the sustainable management of the global natural resources. First and foremost, the EU is fulfilling its mandate to act internationally in environmental matters by taking as a basis for its work the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs), adopted by the United Nations in September 2015.[52] The EU – even without being a Member of the United Nations - has fully committed to this 2030 Agenda, incorporating the goals into its policies, as demonstrated by the European Commission's work program.[53] Insofar, SDG 14 '*Life below water'*, with sub-goal 14.2, and SDG 15 '*Life on Land'* with its sub-goals 15.1, 15.2 and 15.3 refer to the need to guarantee the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services.[54]
In view of the fact that climate change is having an increasingly negative impact on flora and fauna across the globe with more frequently occurring extreme weather events such as droughts,

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[49] Tarin Mont'Alverne and Maria Veras Lima, '*The European Union as a Norm Shaper on Biodiversity Protection'* (2023) Veredas do Direito 20, 1-18(14), available at: https://revista.domhelder.edu.br/index.php/veredas/article/view/2569/25590 (accessed 4 Sep 2024).
[50] (n 30) Art. 191 AEUV para 67.
[51] *Ibid* Art. 191 AEUV para 71.
[52] United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (adopted 21 October 2015) UN Doc A/RES/70/1.
[53] Eurostat,'*Sustainable Development in the European Union: Monitoring report on progress towards the SDGs in an EU context*' (Publications Office of the European Union 2023 ed) p. 9. available at: https://ec.europa.eu/eurostat/documents/15234730/16817772/KS-04-23-184-EN-N.pdf/845a1782-998d-a767-b097-f22ebe93d422?version=1.0&t=1684844648985 (accessed 5 Sep 2024).
[54] (n 37).

floods, heatwaves and cold spells,[55] the objectives of the 2015 Paris Agreement,[56] also signed by the EU should be taken into account. In this landmark international Treaty, the legally binding, overarching goal is to limit the global average temperature increase '*to well below 2°C*' and to pursue efforts '*to limit the increase to 1.5°C above pre-industrial levels*.' In order to reach these objectives, the EU and the other signatories need to undertake and communicate '*nationally determined contributions'* according to Art. 3 in conjunction with Art. 4(2) of the Agreement. As evidenced by the common practice of the parties, the inclusion of nature-based solutions - such as actions to protect, restore, and sustainably manage ecosystems - plays a crucial role in their nationally determined contributions.[57] Additionally, regarding the parties' obligation to establish climate adaption actions, Art. 7(2) of the Agreement pleads for *'action to make a long-term contribution to ecosystems'*.

Furthermore, it is not surprising that the EU, alongside the Member States, is a signatory to a number of international treaties that aim to protect biodiversity. In addition to international treaties dealing with specific and narrow issues of biodiversity such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora[58] and the 1979 Convention on the Conservation of Migratory Species of Wild Animals,[59] the EU has actively negotiated and ratified the Convention on Biological Diversity (CBD) in 1993.[60] This Convention embraces the first framework that aims for the conservation of existing biological diversity as a whole without concentrating on specific ecosystems or species. The three overarching objectives, according to Art. 1 CBD, which encompass the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, are unanimously legally binding for the parties.[61] Furthermore, according to Art. 6(a) CBD, parties are required to develop national biodiversity strategies and plans, which have become the Convention's main implementation device.[62] In this regard, according to Art. 26 CBD, the parties are obliged to issue reports on measures which are reflected in the national biodiversity strategies and plans. The general objectives outlined in Article 1 of the CBD were further specified through a more concrete framework of goals and indicators established at the Conference of Parties (CoP) 10 in Nagoya in 2010, known as the

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[55] Arie Trouwborst, '*The Habitats Directive and Climate Change: Is the Law Climate Proof?*' n: C Born and others (eds.), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?* (2014) 303-324 (305), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2554455 (accessed 12 Sep 2024).

[56] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) Report No. FCCC/CP/2015/L.9/Rev.1.

[57] International Union for Conservation of Nature and Natural Resources (IUCN), '*Countries must use nature more in their climate commitments – IUCN report'* (2019) Press Release, available at: https://iucn.org/news/climate-change/201909/countries-must-use-nature-more-their-climate-commitments-iucn-report (accessed 12 Sep 2024).

[58] Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243, as implemented by Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora [2015] OJ L75/1.

[59] Convention on the Conservation of Migratory Species of Wild Animals (adopted 23 June 1979, entered into force 1 November 1983) 1651 UNTS 333, as implemented by Council Decision 82/461/EEC of 24 June 1982 concerning the conclusion of the Convention on the Conservation of Migratory Species of Wild Animals [1982] OJ L210/10.

[60] (n 4).

[61] Felix Ekardt and others, '*Legally binding and ambitious biodiversity protection under the CBD, the global biodiversity framework, and human rights law'*(2023) Environmental Science Europe 35 p 6, available at: https://enveurope.springeropen.com/articles/10.1186/s12302-023-00786-5#citeas (accessed 4 Sep 2024).

[62] *Ibid* p 6.

twenty Aichi Biodiversity Targets.[63] Although several Aichi Targets, such as Target 11 and Target 15, included measurable numerical objectives, the contracting parties did not regard these targets as legally binding and in consequence were able to implement policies that adversely impacted ecosystems. Even though target 17 expresses that parties should adopt and implement their respective strategies and plans, a lack of an effective monitoring and compliance mechanism revealed.[64] Against this backdrop and the current alarming state of biodiversity with a 68% decline in the abundance of vertebrate species since 1970 and one million species presently at risk of extinction,[65] the EU took on a leading role during the CoP15 by defending targets for a post-2020 Global biodiversity framework.[66] As a result, the parties adopted a more ambitious, comprehensive, precise, and measurable international instrument in December 2022,[67] which is known as the Kunming-Montreal Global Biodiversity Framework.[68] Even though, the new framework also lacks legally binding effects,[69] the eleven lettered sections lay down substantive and procedural provisions underlying motivations, responsibilities and implementation considerations. Most striking is *Section H* postulating 23 '*action-oriented global targets'* for urgent action over the decade to 2030. Targets 1-8 address the field of '*reducing threats to biodiversity'*. Highlighting some of these actions, *target 2* requires that by 2030, at least 30% of areas of degraded terrestrial, inland water, and marine and coastal ecosystems are under effective restoration and *target 3* focuses on a commitment to conserve and manage at least 30 % of terrestrial and inland water areas, and of marine and coastal areas by 2030 through governed systems of protected areas. Among the targets 9-13 which aim *'meeting people's needs through sustainable use and benefit sharing'* target 10 requests a substantial increase of the application of biodiversity friendly agricultural practices.

bb. The EU's Objective-Setting in the 2030 Biodiversity Strategy

It is worth noting that the EU has already postulated these internationally agreed targets in a similar form in its Biodiversity Strategy for 2030, which was published in May 2020.[70] Under this strategy, the EU aims to pursue ambitious global 2030 targets, consistent with the commitments it has made in this strategy.[71]

The EU`s 2030 Biodiversity Strategy goes back to the comprehensive groundwork of the European Green Deal Communication published in December 2019, which aims to transform the

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[63] Conference of the Parties to the Convention on Biological Diversity, 'Strategic Plan for Biodiversity 2011-2020' (adopted 29 October 2010) UN Doc UNEP/CBD/COP/DEC/X/2.
[64] (n 40) p 6.
[65] David Obura, '*The Kunming-Montreal Global Biodiversity Framework: Business as usual or a turning point?'* (2023) One Earth 6 (2) 77-80 (77), available at: https://www.sciencedirect.com/science/article/pii/S2590332223000416 (accessed 4 Sep 2024).
[66] Valentine Romano, '*Europe enters global biodiversity conference with big ambitions'* (2022), Euractiv, available at: https://www.euractiv.com/section/energy-environment/news/europe-enters-global-biodiversity-conference-with-big-ambitions/ (accessed 4 Sep 2024).
[67] Tim Stephens, 'The Kunming-Montreal Global Biodiversity Framework' (2023) International Legal Materials 62(5) 868-887 (869), available at: https://www.cambridge.org/core/journals/international-legal-materials/article/kunmingmontreal-global-biodiversity-framework/2B77626E4CA6C7D30AB77652A7EF56E8# (accessed 4 Sep 2024).
[68] Kunming-Montreal Global Biodiversity Framework (adopted 19 December 2022) CBD/COP/DEC/15/4.
[69] (n 40) p 9.
[70] (n 12).
[71] *Ibid* 4.1.

EU into a climate-neutral and competitive economy by 2050.[72] In legal terms, these postulated policy strategies such as the Biodiversity Strategy or the Green Deal, are communications by the Commission and as such non-binding soft law instruments.[73] However, these communications, just as recommendations and opinions according to Art. 288(5) TFEU, can have practical and legal effects.[74] According to the case law of the Court of Justice, national courts are required to take EU soft law instruments into account when interpreting national measures that implement binding EU acts.[75]

By its very nature, the EU strategy is much more detailed than the Kunming-Montreal Global Biodiversity Framework as it is structured in four pillars, whereby the first pillar *'Protecting and restoring nature in the European Union*' entails 17 defined targets. Following the aforementioned goals established by the Kunming-Montreal Framework, the EU strategy also seeks to address nature protection with 3 targets under the heading '*A coherent network of protected areas'* and on the one hand and '*an EU Nature Restoration Plan'* with 14 targets on the other hand. Firstly, as *target 3* of the Kunming Montreal Framework, the EU intends to legally protect a minimum of 30% of the EU's land area and 30% of the EU's sea area of which at least a third is strictly protected.[76] It is not surprising that in particular, the remaining primary and old-growth forests in the EU should be placed under strict protection given the fact that they are extremely rare, threatened, small and often poorly connected. However, the
strategy does not define primary or old-growth forest, which in practice makes it difficult to identify such areas at a national and regional level.[77]

Moving on to the strategy's targets regarding the EU Nature Restoration Plan, it is remarkable that a clear majority of all targets (14 out of 17) are dedicated to restoration measures addressing degraded and destroyed ecosystems. The reason for the fewer targets on protection measures could be that there is already an existing EU legal framework laid down in the Nature Directives establishing the network of nature protection areas known as Natura 2000. On the other hand, the targets relating to the restoration measures pursue a holistic, overall landscape approach and address the restoration of nature in the various land use sectors. Insofar, the strategy recognises that restoration is needed in agriculture, forest, marine, freshwater and urban environments.[78] In principle, the overall landscape approach is not new to EU biodiversity policy. The objective to integrate biodiversity measures into key sectors such as agriculture and forestry was already

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[72] European Commission, 'The European Green Deal' COM (2019)640 final.

[73] Diana Vela Almeida and others, '*The "Greening" of Empire: The European Green Deal as the EU first agenda'* (2023) Political Geography, Vol 105, 102925, p. 2, available at: https://www.sciencedirect.com/science/article/pii/S0962629823001038 (accessed 21 Aug 2024).

[74] Florin Coman-Kund and Corina Andone, *'European Commission's Soft Law Instruments: In Between Legally Binding and Non-binding Norms'* (2019) in Patricia Popelier (ed), *Lawmaking in Multi-level Settings* (Nomos 1ed 2019) 173-197 (176), available at: https://pure.uva.nl/ws/files/60889975/European_Commission_s_soft_law_instruments.pdf (accessed 10 Sep 2024).

[75] Case C-322/88 Salvatore Grimaldi v Fonds des Maladies Professionnelles [1989] ECLI:EU:C:1989:646 para 18.

[76] (n 12) 2.1.

[77] European Forest Institute, '*Protecting Old-Growth Forests in Europe: A Review of Scientific Evidence to Inform Policy Implementation - Final Report'* (2021) p. 7, available at: https://efi.int/sites/default/files/images/resilience/OLD-GROWTH%20FORESTS_28.06.21.pdf (accessed 10 Sep 2024).

[78] Erik Gerritsen and others, '*EU Biodiversity Strategy: Putting people and nature at the heart of restoration'* (2020) IEEP p. 4, available at: https://ieep.eu/wp-content/uploads/2022/12/First-impressions-of-the-EU-biodiversity-strategy-2.pdf (accessed 10 Sep 2024).

stipulated in Target 3 of the EU Biodiversity Strategy for 2020.[79] However, the new 2030 strategy appears to focus on the various land sectors in more detail and to create synergy effects with specific strategies in other areas such as the Farm to Fork Strategy regarding agricultural land, the EU Soil Thematic Strategy for restoring soil ecosystems and the new EU Forest Strategy for forest areas.

With regard to target 2 of the EU Biodiversity Strategy 2020 to conserve and restore ecosystems and their services, this has only been achieved to a limited extent. As the Commission´s evaluation document from September 2022 has concluded, the specified action to restore at least 15% of degraded ecosystems by 2020 could not be reached even though restoration activities have taken place in all Member States.[80] As the Commission summarised at the end of this report, the restoration of ecosystems requires more than just voluntary measures; rather, new legislation with binding objectives is needed.[81]

This approach of a robust legal framework was already introduced in the 2030 Strategy under the headline *'Strengthening the EU legal framework for nature restoration.'* Insofar, the strategy emphasises the Commission´s intention to propose a legal binding instrument regarding nature restoration with binding targets for the Member States and requirements for national biodiversity restoration plans.[82] This objective can be considered as successfully achieved after the Commission has proposed a draft for a Regulation on nature restoration in June 2022[83] After many surprising turns and amendments in the legislative procedure,[84] the outcome has been the Nature Restoration Regulation (EU) 2024/1991, which was published in the Official Journal of the European Union on 29 July 2024.[85]

Finally, one of the 2030 strategy objectives addresses a well-known driver of biodiversity loss - namely the threat caused by invasive alien species (IAS). It is remarkable that Nature 2000 sites have proved ineffective in preventing the introduction of invasive species, so that the accumulation of invasive alien species has accelerated there in recent decades. It seems that EU protected areas as a whole are a refuge for biological invasions. In this respect, invasive species are increasingly becoming a key problem for native species.[86]As early as 2006, the EU Biodiversity Strategy stressed the need to prioritize the '*control of alien species*,'[87] which led to the adoption of the EU Invasive Alien Species Regulation in 2014.[88] In detail, the current strategy sets a goal to cut down the number of Red List species threatened by invasive alien species by

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[79] European Commission, 'Our Life Insurance, Our Natural Capital: An EU Biodiversity Strategy to 2020' COM (2011) 0244 final Target 3.

[80] European Commission, 'Evaluation of the EU Biodiversity Strategy to 2020' SWD (2022) 284 final.

[81] *Ibid* Lesson 4.

[82] (n 12) 2.2.1.

[83] Proposal for a Regulation of the European Parliament and of the Council on Nature Restoration COM (2022) 304 final.

[84] Lukas Bodenbender, *´Die EU-Verordnung über die Wiederherstellung der Natur – Ein Überblick´* (2024) NuR 46, 525-533(526), available at: https://link.springer.com/article/10.1007/s10357-024-4424-x (accessed 10 Sep 2024).

[85] (n 13).

[86] Rocío A Baquero and others, '*Tackling biological invasions in Natura 2000 networks in the light of the new EU Biodiversity Strategy for 2030'* (2021) Management of Biological Invasions Vol 12(4) 776–791 (777), available at: https://www.reabic.net/journals/mbi/2021/4/MBI_2021_Baquero_etal.pdf (accessed 11 Sep 2024).

[87] European Commission, 'Halting the loss of biodiversity by 2010 - and beyond - Sustaining ecosystem services for human well-being' COM (2006) 0216 final.

[88] 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 [2014] OJ L317/35.

50%. For that, the implementation of the IAS Regulation should be stepped up.[89] Against the background of the Nature 2000 sites particularly affected by invasive alien species, it is misguided that the objective makes no attempt to adequately combat invasive alien species in these areas - for example through an amendment of the EU Nature Directives. As a consequence, successful implementation in this regard will largely depend on effective national enforcement measures and the adequate allocation of both financial and human resources.[90]
Finally, it should also be noted that both strands of the objectives in the 2030 biodiversity strategy - protection and restoration - aim to make a contribution to climate change mitigation and adaptation. With reference to the EU's goal of becoming climate-neutral by 2050 and thus achieving net-zero emissions, the strategy identifies that nature protection and restoration across land and sea increases the EU's resilience to climate change.[91] This reference shows that climate change and biodiversity loss are recognised as an intrinsic problem that needs to be tackled with integrated measures.

2. Legal Instruments and Governance in the EU Biodiversity Protection

a) EU's Legal Mechanisms for Biodiversity Protection

Driven by the Biodiversity Strategy 2030, the EU's legal framework regarding biodiversity protection has recently shifted its focus from *conservation* to *restoration* of ecosystems.
The brand-new Nature Restoration Regulation (EU) 2024/1991 published in the Official Journal of the European Union on 29 July 2024[92] is now at the heart of the EU's legal instruments for biodiversity protection with the aim of restoring ecosystems based on binding targets and obligations that can be measured and monitored.[93] On the one hand, this regulation aims to complement the existing Natura 2000 network consisting of protected areas based on the Habitat Directive and the Wild Birds Directive,[94] on the other hand it goes beyond that scope, as the Member States must also take restoration measures in areas that fall outside Natura 2000 sites.[95]
In the following, firstly, the legal approach of the existing Natura 2000 network will be examined, emphasising its strengths and weaknesses. Based on these findings, the second step will explore the new holistic approach in the Nature Restoration Regulation, also in relation to its correlation with other more specific legal instruments in this field.

aa. The regulatory framework of the Natura 2000 network

For more than 30 years, the centerpiece of EU nature protection has been the Natura 2000 network, which consists of protected sites such as national parks, landscapes and reserves designated under the Habitats Directive and the Wild Birds Directive. Both Directives, regarded as cornerstones of EU nature protection legislation,[96] recognise the EU´s natural resources as an

[89] (n 12) 2.2.10.
[90] (n 68) p 787.
[91] (n 12) 1; 2.2.1
[92] (13).
[93] (83) Explanatory Memorandum.
[94] *Ibid.*
[95] (13) Recital 26.
[96] Academy of European Law, '*Trainer´s Manual – Module on Nature Protection Law – Focus on Site Protection'* (2017) p 25, available at: https://www.era-comm.eu/EU_Nature_Protection_Legislation/speakers_contributions/trainers_manual.pdf (accessed 13 Sep 2024).

integral part of the heritage of the peoples of Europe.[97] Against this backdrop, the Habitats Directive has been identified natural habitats and species of Community interest which require conservation and management actions at the Union level.[98] Insofar, as stated in Art. 2(2) of the Habitats Directive, the Directive´s principle aim is maintaining and restoring a '*favourable conservation status'* of natural habitats and species of Community interest.

In order to fulfil this goal, Art. 3(1) requires the Member States to establish a coherent European ecological network, known as the Natura 2000 network, which is built upon protected sites. More precisely, according to Art. 4(2), the Commission draws up a list of *sites of Community importance (SCI)* based on the Member State´s preparatory work. For that reason, as Art. 4(1) requires, each Member State needs to evaluate its territory in order to select certain sites on the basis of the criteria set out in Annex III. In essence, the selected site must host one of the 233 natural and semi-natural habitat type laid down in Annex I and certain species laid down in Annex II. In another stage, as soon possible and within six years at most, the adopted site of Community importance, is being designated by the Member State concerned as a *special area of conservation (SAC)* as laid down in Art. 4(4).

Ultimately, the Natura 2000 network consists of these *special areas of conservations (SAC)* and of *special protection areas (SPA)* set up by the Member States according to Art. 4(1) of the Wild Birds Directive as these are integrated into the network by virtue of Art. 3(1)(2) of the Habitats Directive.

It should also be noted that the assessment and designation process carried out by the Member States is not a one-time operation, but a continuous process,[99] despite the imprecise wording in Art. 4. This is further evidenced by the case-law of the Court of Justice with regard to the Wild Birds Directive. According to the Court, it would be incompatible with the objective of an effective protection of birds if the obligation of the Member States to classify the most suitable territories for establishing a SPA were to end with the transposition of the Birds Directive.[100]

The first weakness of the Natura 2000 network can already be drawn from the above, as the designation of sites is subject to a rigid Annex regime - especially with regard to the distinction between listed and unlisted habitats and species. In addition, according to in Art. 12, 13, Member States are obliged to establish a system of strict protection for the animal species listed in Annex IV (a) and plant species listed in Annex IV(b). The procedure for amending the Annexes in Art. 19 of the Habitats Directive is to be regarded as static, as it does not provide for a systematic review of their content to ensure that the species requiring protection are listed and those no longer requiring protection are downgraded or removed. Insofar it is revealing, that the Annexes of the Habitats Directive were just updated once as a result of the enlargement of the EU.[101]

Furthermore, once a Natura 2000 site is listed, it falls under the legal protection regime laid down in Art. 6 of the Habitats Directive. As first obligation according to Art. 6(1), Member

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[97] (n 9) Recital 7.

[98] (n 10) Recital 6.

[99] An Cliquet and others, '*Adaptation to climate change – legal challenges for protected areas'* (2009) Utrecht Law Review Vol 5(1) 158-175(164),
available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1440152 (accessed 13 Sep 2024).

[100] Case C-209/04 Commission v Republic of Austria [2006] ECLI:EU:C:2006:195 para 43.

[101] Rob Amos, '*Assessing the Impact of the Habitats Directive: A Case Study of Europe´s Plants*' (2021) Journal of Environmental Law Vol 33(2), 365-393(387), available at: https://academic.oup.com/jel/article/33/2/365/6278041?login=true (accessed 13 Sep 2024).

States must take '*necessary conservation measures'* in order to realise the conservation objectives of the special area of conservation in question. With regard to the conservation objective, reference should be made to Art. 4(4), which states that each Member State is required - when designating an area - to establish priorities that contribute to the 'maintenance or restoration at a favourable conservation status.' Insofar, a weakness can already be identified with regard to the scope of protection in Art. 6(1). The fact that the conservation measures have such a strong connection with individually defined conservation objectives makes it more difficult to legally protect natural values such as intrinsic landscapes in the concerned site.[102] In this context, it should be noted that the Habitats Directive has no specific, measurable and time-related goals for Member States to to reach a favourable conservation status for natural habitats or species. In fact, the wording of Art. 2(2) and Art. 6(1) in conjunction with Art. 4(4) is designed in such a way that, although it requires measures to achieve a specific objective, it grants the Member States a certain degree of discretion with regard to the pace and urgency of conservation measures.[103] Additionally, in the face of lacking deadline goals, there is the likelihood that Member States have little incentive to invest in measures which go beyond maintaining the status quo.[104]

Another Member State´s obligation is encompassed in the deterioration prohibition laid down in Art. 6(2) which is also linked to the objectives of the designated site. Based on that, Member States are required to take appropriate actions in order to avoid the deterioration of conditions for the concerned habitat and species as well as significant disturbance of the species.

The main focus of both Member States' duties arising from Art. 6(1) and (2) is aimed at nature conservation, but is sometimes considered insufficient when it comes to restoration.[105]

Insofar it is significant to distinguish between the measures of conservation and restoration, as they have very different effects. On the one hand, conservation of a nature site refers to the maintenance of which is still present, while restoration refers to the return of a natural site to a former condition.[106] Taking a look back in the Habitats Directive, the objective laid down in Art. 2(2) and more precisely in Art. 4(4) highlight that measures shall be designed to maintain or restore a favourable conservation status. Following from this, Member States' duty in Art. 6(2) to take *appropriate steps to avoid the deterioration* of habitats and species, has been interpreted by the Court of Justice as an obligation to repair damage that has been already occurred. In a case-law example, the Court of Justice ruled that Ireland has failed its obligations under Art. 6(2) because it was necessary for the Irish authorities not only to take measures to stabilise the problem of overgrazing, but also to ensure that damaged habitats are allowed to recover.[107] Therefore, it can be concluded that the protection regime of Art. 6(1),(2) does indeed include

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[102] Kees Bastmeijer, '*Natura 2000 and the Protection of Wilderness in Europe'* in Kees Bastmeijer (ed), *Wilderness Protection in Europe. The Role of International, European and National Law* (Cambridge University Press 2016) 177-198 (186), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3279448 (accessed 14 Sep 2024).

[103] Niels Hoek, '*The Habitats Directive and Heath: The Strain of Climate Change and N Deposition'* (2022) European Energy and Environmental Law Review Vol 31(1) 41-53(45), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476300 (accessed 14 Sep 2024).

[104] Niels Hoek, '*A critical analysis of the proposed EU Regulation on Nature Restoration: Have the problems been resolved?'* (2022) European Energy and Environmental Law Review Vol 31(5) 320-333(322), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476293 (accessed 14 Sep 2024).

[105] *Ibid* 321.

[106] (n 103) 41.

[107] Case C-117/00 Commission v Ireland [2002] ECLI:EU:C:2002:366 para. 31.

the obligation - if necessary - to restore the sites concerned, albeit only by means of a teleological interpretation.
Furthermore, the requirement of an appropriate assessment in Art. 6(3) should be addressed, which applies to all projects and plans that are likely to have a significant effect with regard to the site's conservation objectives. In assessing the risk of a significant effect, the Court of Justice refers to the precautionary principle in Art. 191(2) TFEU, as it should not be possible to rule out, on the basis of objective circumstances, that the plan or project in question will have a significant adverse effect on the site.[108] However, as Advocate General Mazak stated in its opinion, not all human activities such as house or road construction are banned within the Natura 2000 network, but only if it does not adversely affect the integrity of the site.[109]
In addition, according to Art. 6(4), Member States may even realise a plan or a project for socioeconomic reasons that has proven negative implications. Although this generous derogation procedure is not provided for in the Wild Birds Directive by itself, Art. 7 of the Habitats Directive determines that the obligation procedure in Art. 6(2)-(4) replaces the obligations arising under the first sentence of Article 4 (4) of the Wild Birds Directive. Due to the restrictions of the protection regime laid down in Art. 6 and the possible derogations, the Natura 2000 network has been criticised for not guaranteeing a comprehensive wilderness protection, although the habitats would benefit from certain characteristics of wilderness such as natural processes and dynamics of ecosystems.[110] In this respect, Natura 2000 sites that provide more opportunities for non-human intervention management would be more desirable.
Another weakness of the EU Nature Directives is recognizable, namely that areas falling outside the Natura 2000 network are not subject to an adequate protection mechanism. Therefore, it is more accurate to say that the areas of Natura 2000 do not build a network, but rather a collection of isolated sites.[111] At least, some connectivity measures between the sites would facilitate a flow of species and resources and work towards biodiverse and climate-resilient ecosystems. In response of the changing climate and resulting extreme weather events, protected species could have better opportunities to survive through such measures.[112] In this respect, the Habitats Directive provides only an inadequate approach when it stipulates in Art. 10(1) that Member States *shall endeavour where they consider it necessary*, to improve the ecological coherence of the Nature 2000 network. This sounds like a commitment more voluntary in its nature,[113] which cannot be enough given the importance of a coherent network.
Finally, the presented shortcomings of the Nature 2000 network are also confirmed by the data reported by Member States under Art. 17 of the Habitats Directive. Insofar, the relevant report regarding the '*State of nature in the EU'* was last published in 2020 for the years 2013-2018 and reveals that 81% of habitat assessments have a poor or bad conservation status, only 15% of habitats have a good status and 4 % reported as unknown.[114]

[108] Case C-127/02 Waddenzee vs Staatssecretaris van Landbouw [2004] ECLI:EU:C:2004:482 para 44.
[109] Case C-2/10 Franchini Sarl and Eolica di Altamura Srl v Regione Puglia [2011] ECLI:EU:C:2011:252 Opinion of AG Mazák para 30.
[110] (n 87) 183.
[111] (n 55) 315.
[112] *Ibid* 316.
[113] *Ibid* 317.
[114] (n 8).

bb. The new approach in the framework of the Nature Restoration Regulation

To put an end to this negative trend and halt the main drivers of biodiversity loss, a shift from conservation to restoration measures is required, which is enshrined in the recently enacted Nature Restoration Regulation. In this respect, the new instrument provides rules at EU level for the restoration of ecosystems in order '*to ensure the recovery and resilient nature across the Union territory.'* Additionally, it is emphasised that restoring ecosystems is particularly relevant in combating climate change.[115]

The new comprehensive legal instrument partly builds on the existing Nature 2000 network, for example in Art. 4(1)(2) of the Nature Restoration Regulation, by prioritising restoration measures in terrestrial, coastal and freshwater ecosystems that are required by 2030 on areas located in Natura 2000 sites. In this regard, it makes sense to use the Natura 2000 sites as a basis for the planning of the earliest restoration measures (up to 2030), as national nature conservation administrations already exist in this area, which saves time and costs.[116]

However, it is essential to note that the restoration measures required by the Regulation generally apply to all areas of the EU, '*also in areas that fall outside Natura 2000 sites.'*[117] This holistic approach is already reflected in the subject matter laid down in Art. 1(2), which states that restoration measures should cover at least 20% of land areas and 20% of sea areas by 2030 and all ecosystems in need of restoration by 2050. Indisputably, this objective is addressing the EU as a whole and is therefore just policy objective of the Union, which does not create binding effects for individual Member States.[118]

In response to the weakness of the EU Nature Directives due to a lack of measurable deadline goals, Art. 4-5 of the Regulation contain obligations for the Member States to take restoration measures for improving the condition of the habitats listed in Annex I and II which are not in good conditions. Crucially, the provisions set concrete, legal-binding and time-bound targets. For terrestrial, coastal and freshwater ecosystems, Art. 4(1) refers to restoration measures which shall be reached by 2030 on at least 30% of the '*total area of all habitat types'* listed in Annex I, by 2040 on at least 60% and by 2050, on at least 90% of the '*area of each group of habitat types*.' The same target timetable applies to marine ecosystems under Article 5(1), referring to the habitat types listed in Annex II. These Annex-based regime refers to six different groups of habitat types in Annex I and seven groups of habitat types in Annex II, whereas the habitat types which are already listed in Annex I of the Habitats Directive are included. This connectivity of the two Annex regimes is also highlighted in Recital 33, stating that restoration measures should be taken with a view to improving the condition of habitats and re-establish those that fall within the scope of Annex I of the Habitats Directive. Moreover, the different references regarding the '*total area of all habitat types'* by 2030 and the '*area of each group of habitat types'* by 2040 and by 2050 are for practical reasons. As such, the wording '*total area of all habitat types'* in Art. 4(1)(a) leaves Member States discretion with regard to the choice of each group of habitat types. This allows the Member States to take restoration measures by 2030 on the areas whose condition is already known to them and to exclude other groups from measures completely. Since it is expected that by 2040 and 2050 the Member States will have more information - due to improved data - about the status of groups that have

[115] (n 13) Recital 1.
[116] (n 69) 528.
[117] (n 13) Recital 26.
[118] (n 69) 527.

so far been less addressed, Art. 4(1)(b) refers in this respect to '*area of each group of habitat types'.*[119]

Furthermore, Art. 4(4) and Art. 5(2) of the Regulation contains an obligation for Member States to re-establish habitat types on areas where those habitat types do not occur with the aim of achieving a '*favourable reference area.'* It is also mandatory that these measures will be taken within time-bound deadlines in order to to reach the total favourable reference area for each group of habitat types (at least 30% by 2030, 60% by 2040 and 100% by 2050). As Recital 31 of the regulation explains, the legislator has accepted that the restoration or re-establishment of a habitat type such as grassland, heath or wetland may lead to deforestation in certain cases. As such, the obligation arising from Art. 4(4) could has a potential for conflict between restoring and re-establishing non-forest ecosystems and halting deforestation.[120] The latter objective indirectly results from Art. 12(1), where Member States shall put in place restoration measures necessary to enhance biodiversity of forest ecosystems. Deforestation activities also contradicts the objective of planting at least three billion additional trees in the Union by 2030 which is enshrined in Art. 13(1). But it is also clear that every holistic approach - especially in relation to the different habitat types - always has the potential for conflict with regard to the question of which restoration measure and which habitat type has priority. The concept of a 'favourable reference area' defined in Art. 3(8) of the Regulation can be seen as an instrument to solve potential conflict of priorities as it is needed to identify those areas in order to bring them in a 'favourable conservation status.'[121] For the determination of favourable reference areas, it is necessary to take into account characteristics of the historic area and possible future scenarios due to climate change.[122]

In addition to the aforementioned restoration obligations laid down in Art. 4(1), (4), according to Art. 4(7), Member States are obliged to take restoration measures, which lead to habitats with sufficient quality and quantity. In particular, the obligation concerns measures which shall re-stablish habitats and enhance connectivity between habitats.

Moving forward, the focus shifts to the non-deterioration obligation, which is comprehensively laid down in Art. 4(11)-(16) for terrestrial, coastal and freshwater ecosystems and in Art. 5(9)-(13) for marine ecosystems. As Art. 4(11) shows, the general non-deterioration obligation is linked to restoration measures already carried out according to Art. 4(1),(4),(7) that have led to a *good condition* of an area of a habitat type. The non-deterioration in Art. 4(12) refers to a broader range, namely to all habitat areas listed in Annex I. It has to be said that the legal form of the non-deterioration obligation was significantly weakened due to a compromise in the trilogue within the ordinary legislative procedure.[123] As such, the original Commission´s proposal was based on an obligation of result since it stated that Member States shall ensure that the concerned areas do not deteriorate.[124] Now, in the existing wording of Art.

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[119] *Ibid 528.*
[120] *Ibid.*
[121] (n 13) Recital 28.
[122] *Ibid* Recital 65.
[123] de Leeuw, B and Backes, C '*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?*' (2024) Journal for European Environmental and Planning Law, Vol 21(1) 22-40(23), available at: https://dspace.library.uu.nl/bitstream/handle/1874/452867/jeep-article-p22_004.pdf?sequence=1&isAllowed=y (accessed 16 Sep 2024).
[124] (n 68) Art. 4(6).

4(12), it was added that Member States '*shall endeavour'* to take necessary measures aiming non-deterioration. This shift towards a best-effort obligation is able to substantially diminish its effectiveness and enforceability. Without an obligation of result for the restoration measures already implemented, there is a risk that results once achieved will not be maintained and that deterioration may easily occur after some time again.[125] Properly, in the light of the principle of proportionality in Art. 5(4) TEU, the obligation only covers 'significant deterioration', although the non-deterioration clause in Art. 6(2) of the Habitats Directive only refers to a deterioration, but also to *significant* disturbance. As the reference in Art. 6(12) '*without prejudice to Directive 92/43/EEC'* makes clear, the two non-deterioration obligation regimes complement each other, so that with regard to Nature 2000 sites the stricter obligations of result regarding special areas of conservation is still activated. [126]However, it is regrettable that this obligation of result could not be adopted for the Nature Restoration Regulation. In addition, there are several options for Member States how they can derogate from the non-deterioration obligation. Regarding areas outside Nature 2000, according to Art. 4(13), Member States can choose to apply the non-deterioration to biogeographical region instead of specific habitats. But this decision must be taken by the Member States within a very short deadline by 19 February 2025, and it will hardly be possible for them to have an overview of all areas of habitat types within six months. Therefore, it could be appropriate for the Member States to notify the Commission of their intention to do so within the deadline.[127] It should also be noted that Art. 4(14), (15) - also in relation to areas outside Natura 2000 - state that the non-deterioration obligation does not apply in the case of force majeure (also natural disasters) and unavoidable habitat transformations which are directly caused by climate change. In addition, plans and projects of overriding public interest are not taken into account in the non-deterioration obligation. Consequently, the same applies to plans or projects within Natura 2000 sites authorised in accordance with Art. 6(4) of the Habitats Directive. In this respect, Art. 6(1) provides a privilege for the planning, construction and operation of plants for the production of energy from renewable sources, as it is assumed that these projects represent an overriding public interest.

The all-encompassing, holistic character of the Nature Restoration Regulation becomes even more evident taking into account the measures and objectives for other specific ecosystems. Starting with the urban ecosystems, Member States shall ensure, according to Art. 8(1), that by the end of 2030 there is no net loss in the total national area of urban green spaces and urban tree canopy cover compared to 2024 and from 2031, achieving an increasing trend in the total national area of urban green space and urban tree canopy cover. In Recital 47 of the Regulation, it is emphasised that urban ecosystems such as urban forests, parks and gardens, urban farms, tree-lined streets and urban meadows and hedges which represent around 22% of the EU land surface, provide important habitats for biodiversity, in particular plants, birds and insects. However, it should be noted that measures envisaged for this purpose, such as the restoration and enlargement of urban green space and the increase in urban tree canopy, are

[125] (n 108) 33-34.
[126] *Ibid* 39.
[127] (n 69) 529.

primarily taken to generate benefits in terms of climate change mitigation and adaptation, mitigating noise and air pollution and human health and well-being.[128]
Another specific sector is covered in Art. 11 of the Regulation by restoration measures relating to agricultural ecosystems. As Recital 54 points out that resilient and biodiverse agricultural ecosystems are needed for food safety and affordability and, additionally, for increasing agriculture's resilience to climate change and environmental risk, the provision of Art. 11 directly tackles the subject matter of the Regulation laid down in Art. 1(1) (b), (c). Insofar, the vague wording in Art. 11(1) regarding the obligation for Member States to '*put in place the restoration measures necessary to enhance biodiversity in agricultural ecosystems'* is specified in Art. 11(2), where the measures shall contribute to an increasing trend in two of the three ecological indicators. In this respect, Annex IV describes the three referring indicators in detail. Further on, taking into consideration the fact that peatlands provide significant biodiversity benefits and make an important contribution to the reduction of greenhouse gas emissions,[129] it is not surprising that Art. 4(4) requires restoration measures for drained peatlands in agricultural use. As such, the provision establishes time-bound rewetting targets, namely to rewet by 2030 at least a quarter regarding 30% of the areas on which areas shall be put in place., 40 % by 2040 and 50% by 2050. It should be critically noted that these targets only concern rewetting which is a prerequisite for peatland restoration, and not the entire restoration result for a peatland.[130] It should be added that the application of the outlined obligations in Art. 11 can be suspended according to a mechanism laid down in Art. 27. In this regard, the Commission is able to adopt implementing acts for a temporary suspension lasting no longer than 12 months under extraordinary circumstances such as natural disasters, pandemics and severe economic crisis. Moreover, the measures for agricultural ecosystems must be read in the context of the new Common Agricultural Policy (CAP) for 2023-2027, as the Member States are obliged to implement area-related payments for certain environmental goals in their CAP strategic plans.[131]
Given that forest and wooded land cover over 43,5 % of the EU´s total land area forming a unique natural home for most species on land,[132] it is unsurprising that Art. 12 of the Regulation obliges Member States to put in place restoration measures in forest ecosystems. According to Art. 12(2), the obligations are orientated and measured on the basis of an increasing trend with regard to the so-called '*common forest bird index'* and further according to Art. 12(3) with regard to seven indicators for forest ecosystems (Annex VI) of which the Member States must select six. To enable Member States to effectively implement these restoration measures in the complex structure of EU forests, a forest monitoring system based on the Commission's proposal for a Regulation on a monitoring framework for resilient European forests[133] is likely to play a key role once it is adopted. At the present time Member States lack

[128] Institute for European Environmental Policy (IEEP), '*Why is nature restoration critical for the resilience of European cities?'* (2022) p. 1, available at: https://ieep.eu/wp-content/uploads/2023/01/8_-Nature-Restoration-and-Cities-resilience.pdf (accessed 16 Sep 2024).
[129] (n 13) Recital 59.
[130] Wetlands International, '*Peatlands in the EU Nature Restoration Law – a Factsheet'* (2022), available at: https://europe.wetlands.org/peatlands-in-the-eu-nature-restoration-law-a-factsheet/ (accessed 16 Sep 2024).
[131] (n 13) Recital 58.
[132] European Commission, 'New EU Forest Strategy for 2030' COM (2021) 572 final.
[133] Proposal for a Regulation of the European Parliament and of the Council on a Monitoring Framework for Resilient European Forests' COM (2023) 728 final.

accurate and comparable forest data, so that no major focus can be placed on forest and their multifunctionality. Both a proposed forest data collection and data sharing framework would be centered on collection of relevant data on forest health, biodiversity and forest structures.
As previously announced in the 2030 Biodiversity Strategy, the restoration measures in Art. 12 are supplemented in Art. 13 by the EU's target of planting 3 billion additional trees by 2030. It has been criticised that although the target sounds ambitious, it falls short of the historical trend of forest expansion, and in view of the fact that there many abandoned agricultural areas in the EU that offer potential for afforestation.[134] In addition, no specific, quantified obligations are imposed on the Member States making it unclear how the objective is to be implemented. A detailed distribution key would be necessary to achieve this goal. The provision hidden in the Nature Restoration Regulation is out of place. Instead, the adoption of a separate regulation would probably have been better, especially in view of the fact that tree planting is not a restoration measure by itself. Moreover, despite some positive biodiversity aspects about tree planting such as the significant contribution to forest connectivity and defragmentation as well as the presence of levels of taxonomic and functional diversity, it must be said that new forests are typically colonised very quickly by common, mobile and generalist species. The colonisation of rare and specialised species and the establishment of complex cross-species networks of biotic interactions can take many decades or centuries.[135]
To conclude, it should be noted that in order to achieve the presented target-based restoration objectives, there must be triggered synergy effects between the measures in the various sectors. This can only be achieved if the restoration measures are implemented within the context of existing Natura 2000 sites and are integrated with other relevant EU policy areas, such as climate protection and the Common Agricultural Policy.[136] To ensure this integrated and interrelated process, the national restoration plans serve as the central management instrument of the Regulation. The whole procedure for national restoration plans is laid down in Art. 14-19 of the Regulation which will be examined in the next section.

b) EU´s Governance Mechanisms for Nature Restoration

Before analysing the EU's governance mechanism incorporated in both the EU Nature Directives and the Nature Restoration Regulation, it should be clarified what governance actually means and comprises in terms of EU law.
In a very broad sense, governance is the '*sum of the many ways in which individuals and institutions, public and private, organise their common affairs*.'[137] As such, it is understood as a broad societal phenomenon, whereby a distinction is made between several governance instruments, which are relevant in the realm of EU environment law. More precisely, five major types of instruments can be pointed out, namely legislative and regulatory, economic and fiscal, agreement-based, information and communication, and ultimately, knowledge and

[134] Heera Lee and others, '*Three billion new trees in the EU's biodiversity strategy: low ambition, but better environmental outcomes?'* (2023) Environmental Research Letters 18(3) 9, available at: https://iopscience.iop.org/article/10.1088/1748-9326/acb95c/pdf (accessed 17 Sep 2024).
[135] Theresa Frei and others, '*Can natural forest expansion contribute to Europe's restoration policy agenda? An interdisciplinary assessment'* (2023) Ambio 53, 34-45(35), available at: https://link.springer.com/article/10.1007/s13280-023-01924-2#citeas (accessed 17 Sep 2024).
[136] (n 13) Recital 66.
[137] Commission on Global Governance, 'Our Global Neighborhood – Report of the Commission on Global Governance' (1995) Chapter One – A New World, available at: https://www.gdrc.org/u-gov/global-neighbourhood/ (accessed 17 Sep 2024).

innovation instruments.[138] As we have seen in the precious section, both the EU Nature Directives and the Nature Restoration Regulation lay down a comprehensive regulatory framework with specific targets to be reached by the Member States. Now the focus should be taken on the EU´s instruments to ensure that national governments correctly apply the biodiversity conservation and restoration provisions. In this context, a key aspect of governance is monitoring and improving of national compliance with EU laws together with active public engagement.[139] In the field of environmental law the informational and knowledge-based governance instruments play a crucial role by promoting accurate tracking and reporting of environmental conditions across Member States.[140] On the one hand, informational governance is based on the idea how information and data can be used to support specific policy objectives. Member States are required to provide information about their activities and measures and the results generated from this. On the other hand, knowledge-based governance activates mechanisms for learning and knowledge sharing between the actors. Insofar, both the EU institutions and the Member States are encouraged to support research and scientific work in order to keep the necessary measures up to date with the latest scientific developments.[141] Against the background of these general governance principles, in the following, an examination will be made of the specific governance provisions laid down in the Nature Directives and the Nature Restoration Regulation.

aa) Governance Framework under the EU Nature Directives

The presented informational governance approach is integrated in both Nature Directives, albeit with slight differences. Starting with collecting of relevant data, the EU Habitats Directive provides in Art. 11 an obligation for the Member States to undertake surveillance of the conservation status of the natural habitats and species listed in the Annexes. In order to take account of scientific progress in surveillance activities, Art. 18(1) shall encourage both the Member States and the Commission to share scientific information in this field. As such, for the effective implementation of the Habitats Directive, the improvement of scientific and technical knowledge is essential[142] as it can also lead to better data quality.

These generated data build the foundation for the National Reports on the measures implemented and their effectiveness which the Member States have to submit to the Commission every six years according to Art. 17(1). In particular, the National Report shall contain an evaluation of the impact of the measures on the conservation status of the natural habitat types of Annex I and the species in Annex II. To put it in other words, it is about an assessment of the respective conservation status with reference to the concept of a favourable conservation status as defined in Art. 1(e), (i) of the Habitats Directive. In order to standardising and harmonising the content of the reports across Member States, the formats and guidelines are updated for each reporting period by the European Environment Agency and a group of experts

[138] Irene Bouwma and others, '*Policy instruments and modes of governance in environmental policies of the European Union: past, present and future'* (2015) WOt-technical report 60, p. 9, available at: https://edepot.wur.nl/373629 (accessed 17 Sep 2024).
[139] European Commission, '*Law and governance'* (2024), available at: https://environment.ec.europa.eu/law-and-governance_en (accessed 17 Sep 2024).
[140] (n 123) p. 27.
[141] *Ibid*.
[142] (n 10) Recital 17.

in collaboration with the Member States.[143] For the reporting period 2019-2024, the main parameters for assessing the conservation status of habitat types encompass range, area, structure and function and future prospects. For the conservation status of species, the parameters are range, population, habitat for the species and future prospects. Each of these parameters must be assessed in a standardised way by making use of an assessment matrix. Finally, the results of the assessment provide information on whether a conservation status is '*favourable*', '*unfavourable-inadequate'*, '*unfavourable-bad'* or in cases of unavailable data '*unknown.*'[144]
While the assessment criteria are standardised, Member State´s monitoring programmes vary significantly. In this respect, monitoring obligations under Art. 11 of the Habitats Directive are interpreted and applied in various ways. As a result, differences occur regarding the quality and quantity of monitoring data used for assessment of conservation.[145] This holds the risk of inconsistency of the Habitats Directive when it comes to the transposition into national law. In a case concerning the correct transposition of the Habitats Directive, the Court of Justice recalls that it is required under Art. 288(3) TFEU to guarantee that the respective national law represents the full application of the directive in a sufficient clear and precise manner.[146] Taking into account the common responsibility of all Member States regarding the European Community's natural heritage based on the Habitats Directive, the Court of Justice stated that Member States are under a particular duty to ensure that the transposition is clear and precise, including the fundamental surveillance and monitoring obligations under Art. 11.[147] However, it should be noted that according to Art. 288(3) TFEU, Member States are free to choose the form and methods for the transposition. Differences in the quality and quantity of data generated by the Member States are therefore to a certain extent inevitable as long as there is no overall monitoring programme in all Member States, comparable to the proposed forest data collection and data sharing framework.
In contrast, the Wild Birds Directive does not explicitly provide an obligation to undertake surveillance. However, by means of an amendment to the Wild Birds Directive under Regulation (EU) 2019/1010 of 5 June 2019,[148] the reporting obligation in Article 12(1) was aligned to the reporting cycle of six years in Art. 17(1) of the Habitats Directive in order to adopt the legislation to the joint practice.[149] Insofar, the reporting obligation implies taking action in surveillance. In this regard it must be recognised that the previous version of Art. 12(1) of the Wild Birds Directive provided a report obligation in a period for three years. It is questionable if the extension of the reporting deadline to six years was appropriate. In view of the rapidly

[143] European Environment Agency, '*Guidelines on Concepts and Definitions: Article 17 of the Directive 92/43/EEC – Reporting period 2019-2024*' (2023) p. 4, available at: https://cdr.eionet.europa.eu/help/habitats_art17 (accessed 18 Sep 2024).
[144] *Ibid* p 19.
[145] Götz Ellwanger and others, 'Current status of habitat monitoring in the European Union according to Article 17 of the Habitats Directive, with an emphasis on habitat structure and functions and on Germany' (2018) Nature Conservation 29, 57-78(70,71), available at: https://natureconservation.pensoft.net/articles.php?id=27273 (accessed 18 Sep 2024).
[146] Case C-6/04 Commission v United Kingdom [2005] ECLI:EU:C:2005:626 para 21.
[147] *Ibid* para 26.
[148] Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC [2019] OJ L170/115.
[149] *Ibid* Recital 9.

changing conditions in the ecosystems due to the ongoing impacts of climate change, it would have been reasonable to harmonise the two reporting obligations to every three years. A three-year cycle would have the benefit to react more quickly and flexible to the necessary adjustments to conservation measures. It should be added that the reporting format for Art. 12(1) of the Wild Birds Directive is laid down in specific guidelines explaining which information are required – insofar, size and trend of individual bird species´ populations/distributions and pressures and threats.[150]
Based on National Reports from both Nature Directives, the Commission assisted by the European Environment Agency, publishes a composite report every six years in accordance with Art. 12(2) Wild Birds Directive and Art. 17(2). Once again, a three-year cycle would have been a more positive impact, as a report—such as the State of Nature in the EU report published in August 2020—tends to attract significant public attention. Anyhow, the publication not only ensures transparent accessibility of nature status information to the public, but also demands for Member State´s accountability regarding their obligations for implementing the conversation measures.
In conclusion, the governance tools provided in the Nature Directive are reasonable in view of the Member States' obligation to take necessary conservation measures. As there are no time-bound or quantitative, measurable targets for the Member States, a governance based on a system of sanctions would not make any sense. Therefore, the information-based and transparent exchange between the Commission and the Member States based on scientific progress remains the only option. Additionally, improving Member States' monitoring programs and establishing a comprehensive overall framework would be beneficial.

bb) Governance Structure in the EU Nature Restoration Regulation
In order to achieve the targets, set out in the Nature Restoration Regulation, Member States are obliged to take significant preparation and implementation efforts. For this purpose, the adoption of national restoration plans, as comprehensively laid down in Articles 14-19 of the Regulation, serves as the central management tool.[151] The implementation requirements within the national restoration plans are extensive and characterised by far-reaching discretions for Member States, which becomes apparent by the fact that Member States should integrate in their plans restoration measures that have already been planned or put in place.[152] Against the backdrop of this immense implementation effort that is required, the EU Nature Restoration Regulation is more similar to a directive in character.[153]
Moreover, the procedural system for the adoption of national restoration plans, especially, the assessment procedure laid down in Art. 17, reminds of an upstream governance instrument.
First of all, according to Art. 16, Member States shall submit a tailored national restoration plan to the Commission by 1 September 2026 on the basis of preparatory measures under Art. 14 and in accordance with the content requirements in Art. 15. More precisely, Art. 15(1) states that the national restoration plan - like the overarching target in Art. 1(2) - covers the period up to 2050, taking into account the interim targets up to 2030 and 2040. However,

[150] European Environment Agency, '*Guidelines on Concepts and Definitions: Article 12 of Directive 2009/147/EC – Reporting period 2019-2024'* (2023), available at: https://cdr.eionet.europa.eu/help/birds_art12 (accessed 18 Sep 2024).
[151] (n 69) 532.
[152] (n 13) Recital 69.
[153] (n 69) 533.

according to Art. 15(2), it is sufficient if the plan for the period from 1 July 2032 to 2050 solely provides a strategic overview of the envisaged restoration measures. After the receipt of the national restoration plan, the assessment procedure begins, whereby the Commission has six months to review the content and adequacy of the draft in according to Art. 17(2). The Commission uses the instrument of observations, which the Member States are obliged to adopt, according to Art. 17(5), in order to finalise their national restoration plan. After 30 June 2032, Art. 19(1) requires Member States to review and revise their national restoration plans at least every ten years. Given the fact of the rate at which biodiversity loss is progressing - especially in relation to the unpredictable impacts of climate change - a period of ten years for a review appears to be too long.

Starting with the preparatory measures, Art. 14(1) obliges Member States to identify the restoration measures which are able to fulfil the specific obligations under Art. 4-13 and to contribute to the EU´s objectives set out in Art. 1. The process of identifying suitable measures should be based on the best available scientific evidence. This is in line with the established case law of the Court of Justice in the context of the EU Nature Directives. For instance, the Court stated that the appropriate assessment of the implications of a plan and project under Art. 6(3) Habitats Directive must be conducted '*in the light of the best scientific knowledge available in the field.*'[154]

It is worth to note that, as laid down in Art. 14(20), the entire preparatory procedure within the Member State must be open, transparent and allowing for participation of the public and relevant stakeholders. This procedure should be in line with the requirements for carrying out of consultations within an environmental assessment as laid down in Art. 6 of Directive 2001/42/EC.[155] According to Art. 6(4) of this Directive, Member States are able to determine the scope of 'public' to which the plan shall be made available. This gives evidence for a certain degree of discretion for the Member States, which is also necessary in order to take account of the different regional and local circumstances. In addition, conflicting interests among different stakeholders are considered, alongside insufficient funding and low political priority, as one of the three main obstacles to a successful ecosystem restoration in Europe.[156] Therefore, a participatory process - as required here - is essential. However, it is questionable whether the two-year preparation period will be sufficient for the Member States to resolve socio-economic frictions such as changing land use and the arrangements for the level of compensation payments. At least for the latter, according to Art. 14(12), Member States are encouraged to promote the use of private and public support schemes to the benefit of stakeholders.

With regard to the specific content of the national restoration plans, Art. 15(3) specifies which elements must be included. Alongside the quantification of the areas to be restored (a) and a description of the restoration measures planned or put in place (c), a process for assessing the effectiveness of the restoration measures and revising those measures (p) must be determined. The latter instruction implies that Member States should continuously monitor and assess their

[154] Case C-164/17 Sweetman v An Bord Pleanala [2018] ECLI:EU:C:2018:593 para 40.

[155] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L197/30.

[156] Jordi Cortina-Segarra and others, '*Barriers to ecological restoration in Europe: expert perspectives'* (2021) Restoration Ecology 29(4) p 1, available at: https://www.researchgate.net/publication/348511911_Barriers_to_ecological_restoration_in_Europe_expert_perspectives (accessed 19 Sep 2024).

restoration activities whereby it can be referred to the requirement for taking account the latest scientific evidence.

One of key tasks of the restoration planning process will be the estimation of the financial needs for the implementation of the restoration measures. Insofar, according to Art. 15(3)(u), Member States are obliged to calculate the amount of financing needed, taking into account EU, domestic and private sources of funding. Against the backdrop that the average annual costs of restoring 30% of the EU protected habitats over the 2022-2030 period have been estimated at 8,2 billion Euros,[157] it is unsurprising that the Union legislator states that '*it is of utmost importance that adequate private and public investments are made in restoration.'*[158] Regarding Union funding, Recital 78 of the Nature Restoration Regulation refers to the expenditure under the Union budget. Insofar, the multiannual financial framework of the EU Commission for the years 2021 to 2027 sets a biodiversity spending target of 7.5% as of 2024 and 10% as of 2026 and 2027. In addition, several major Union financing programmes related to biodiversity objectives are mentioned such as the LIFE Programme and both CAP funds, namely the European Agricultural Fund for Rural Development (EAFRD) and the European Agricultural Guarantee Fund (EAGF). However, outside of the LIFE fund, it is recognisable that stakeholders and public authorities struggle to apply successfully for specific EU funding programmes due to difficulties meeting high pre-financing or co-financing requirements. It is therefore recommended to reduce the excessive administrative requirements imposed by EU authorities in order to not burden smaller restoration projects as much as larger ones.[159]

Finally, the comprehensive monitoring and reporting obligations in Art. 20 and 21 of the Nature Restoration Regulation should be addressed. According to Art. 20(2), Member States are obligated to electronically report extensive data sets and information to the Commission, firstly by 30 June 2031. Afterwards the reporting cycle will take place in the same time period as laid down in the Nature Directives - namely every 6 years. In particular, the reporting obligation concerns the information stemming from the mandatory monitoring activities laid down in Art. 20(1). Unlike Art. 11 of the Habitats Directive, which merely provides for surveillance of the conservation status, which - as described above - is concretised by guidelines, Art. 20(1)(a) itself specifies that the condition and trend of habitat types and the trend in the quality of the habitats of species should be the subject of surveillance. In this respect, as Art. 20(2) clarifies, the monitoring should begin as soon as the restoration measures are put in place.

Remarkably, according to Art. 20(5), the European Environment Agency shall provide a Union-wide report based on all information submitted by the Member States under the Regulation, which may also include information derived from the Nature Directives. It is therefore to be expected that there will be a single State of Nature in the EU report, which will include information from both the Nature Restoration Regulation and the Nature Directives.

In conclusion, the governance mechanism established by the Nature Restoration Regulation is centered on national restoration plans, which serve as the primary tool for Member States to

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[157] Gabrielle Aubert and others, '*How much will the implementation of the Nature Restoration Law cost and how much funding is available?'* (2022) Institute of European Environmental Policy (IEEP), p. 1, available at: https://www.ecologic.eu/sites/default/files/publication/2023/mcdonald-22-Nature-Restoration-Law-and-Funding.pdf (accessed 19 Sep 2024).

[158] (n 13) Recital 78.

[159] EUROPARC Federation, '*Unlocking funds for nature: How the next EU budget must deliver for biodiversity'* (2024) Joint statement, p. 4, available at: http://www.europarc.org/wp-content/uploads/2024/07/2024_07_Unlocking-funds-for-nature_How-the-next-EU-budget-must-deliver-for-biodiversity.pdf (accessed 19 Sep 2024).

implement the regulation. Through this tool, the burden of achieving the ambitious restoration targets is primarily imposed on the Member States. As the holistic approach of the Nature Restoration Regulation concerns all sectors of a Member State where nature is present, only Member States are able to guarantee the complex synergies between the different restoration measures. Therefore, the implementation tool of national restoration plans is a reasonable attempt to effectively tackle biodiversity loss on a national, regional and local level. Additionally, the mandatory involvement of stakeholders in the planning process is a crucial improvement, as this was lacking in the Nature Directives. However, since the Commission can only provide observations on the plans within a six-month period, it would be more effective to grant the Commission broader opportunities for engagement. Finally, it is welcoming that the monitoring and reporting requirements are likely consolidated into a single report covering both the Nature Restoration Regulation and the Nature Directives. This will help to present the complex issue of nature restoration to the public in a clearer and more cohesive manner.

Chapter B: The EU Common Agricultural Policy´s (CAP) Contribution to Biodiversity Protection

In spite of the holistic approach of the Nature Restoration Regulation, it is worth emphasising the field of agriculture in particular. Since agricultural land covers approximately 40% of the EU land area and serves as a habitat for many species,[160] the sector plays a crucial role in determining the status of the biodiversity within the European continent. In that sense, agriculture is widely recognized as a key sector that significantly amplifies the five main drivers of biodiversity loss in the EU, through practices that contribute to land-use changes, habitat destruction, overexploitation, pollution, and climate change.[161] Land-use change, respectively, the conversion of natural ecosystems into farm land, intensive farming practices such as large-scale monoculture plantations and the pollution from agrochemicals are some of the primary factors negatively impacting biodiversity.[162]

However, it must be noted that biodiversity loss is influenced by a number of sectors and policies of the EU, and agriculture is only one of them, which is picked out here. In addition to the agricultural sector, the EU policy areas of regional development and cohesion, forestry, renewable energy pathways, tourism, transport and industry should be mentioned, as their respective developments have a significant influence on the shape of nature resources in the EU.[163] Therefore, the effective integration of biodiversity concerns into these sectors are inevitable to ensure the protection and restoration of biodiversity across the EU.

With regard to agriculture, land areas in Western Europe have undergone dramatic changes over the past 50 years, primarily due to landscape homogenization, simplification, and

[160] (n 14) *Ibid.*
[161] *Ibid.*
[162] Nigel Dudley and Sasha Alexander, '*Agriculture and biodiversity: a review'* (2017) Biodiversity 18(2) 45-49(45-46), available at: https://www.tandfonline.com/doi/full/10.1080/14888386.2017.1351892#abstract (accessed 20 Sep 2024).
[163] European Environmental Agency, '*Biodiversity*' (2020) European briefings, available at: https://www.eea.europa.eu/soer/2015/europe/biodiversity (accessed 30 Sep 2024).

specialization, as well as intensification of farming methods.[164] This development has been significantly influenced by EU´s Common Agricultural Policy (CAP), which was established under Art. 38(1) TFEU and is primarily characterized by market regulation and financial instruments in agriculture.[165] Since its adoption in 1962, the CAP has undergone several significant reforms, progressively addressing environmental and sustainability challenges, particularly following the 1992 reform. However, surveys have shown that the efforts of recent decades – particularly in form of agri-environmental schemes - have been unable to halt biodiversity decline in farm land.[166] The new CAP reform for the period 2023-2027 promises '*a fairer, greener, more animal friendly and flexible CAP'* with higher environmental and climate ambitions, in line with Green Deal objectives.[167]
Following from that, the legal consequences of the CAP 2023-2027 for biodiversity protection will first be examined on the basis of the objectives of the CAP in general and then with regard to its secondary legal basis. Furthermore, the individual instruments of both CAP pillars aiming to halt biodiversity loss will be focused on. Finally, potential conflicts between the national restoration plans and the newly established CAP Strategic Plans will be analysed.

1. Biodiversity Protection in the EU Legal Framework of the CAP

a) Objectives in the CAP related to biodiversity protection

aa) Agricultural policy objectives in EU primary law
Despite numerous reforms over the past decades, the operative scope of the Common Agricultural Policy - market stabilization and support for food production - have remained remarkably consistent.[168] Since its creation in 1962, the CAP has consistently been the EU's largest expenditure until today, even though the new EU´s multiannual financial framework for 2021-2027 allocated for the CAP 386,6 billion, which is slightly less than 25% of the EU budget.[169] Against this background, the main objectives of CAP have remained the same to this day, namely ensuring an affordable and stable food production as well as maintaining fair revenues for farmers.[170] In this respect, it is worth taking a closer look at Art. 39(1) TFEU, where the agricultural policy objectives are set out in detail. Firstly, it should be noted that according to the competence basis in Art. 43(2) TFEU, EU agricultural legal acts are adopted in order to pursue the respective objectives. A glance at Art. 39(1) TFEU shows that the objectives are

[164] Mark Emmerson and others, '*How Agricultural Intensification affects Biodiversity and Ecosystem Services'* (2016) Advances in Ecological Research, Vol 55, 43-97 (45), available at: https://www.sciencedirect.com/science/article/abs/pii/S0065250416300204?via%3Dihub (accessed 20 Sep 2024).
[165] (n 4) Art. 38 para 7.
[166] Moritz Adam and others, '*Call for integrating future patterns of 'biodiversity into European conservation policy'* (2022) Conservation Letters 15(5) p. 9, available at: https://conbio.onlinelibrary.wiley.com/doi/10.1111/conl.12911 (accessed 20 Sep 2024).
[167] European Commission, '*Political agreement on new Common Agricultural Policy: fairer, greener, more flexible'* (2021) Press Release, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2711 (accessed 20 Sep 2024).
[168] (n 146) p. 10.
[169] Hellenic Foundation for European & Foreign Policy, '*In focus – Common Agricultural Policy: How is EU`s expenditure for agriculture allocated?'* (2023) Greek & European Economy, available at: https://www.eliamep.gr/en/in-focus-koini-georgiki-politiki-pos-katanemontai-oi-enischyseis-sta-krati-meli/ (accessed 20 Sep 2024).
[170] Young European Federalists, '*History of the Common Agricultural Policy'* (2023), EU Institutions and Policy, available at: https://www.thenewfederalist.eu/history-of-the-common-agricultural-policy-cap?lang=fr (accessed 20 Sep 2024).

primarily focused on quantitative and socio-economic aspects, and do not take into account of qualitative aspects, such as product quality in agriculture.[171] This is already most visible in the first objective mentioned in Art. 39(1)(a) TFEU, namely '*to increase agricultural productivity.'* As such, technical progress, rational development of agricultural production and the optimum utilization of the factors of production are mentioned as means in order to achieve productivity, whereby this list is not to be understood as exhaustive. In this respect, according to its purpose, the list also offers scope for increasing food quality and improving animal and plant health.[172] As the CAP implementation since the beginning of its establishment in the 1960s shows, the Union legislator has taken this objective as an opportunity to increase the production output through agricultural intensification measures. The latter includes in particular the use of chemicals such as pesticides and fertilizers, mechanisation and monocultures, which has contributed on a large scale to a loss of biodiversity.[173] However, the objective of increasing productivity must be read together with the objective of stabilising the markets according to Art. 39(1)(c) TFEU. In this respect, the Union mainly pursued the goal of reducing the production of individual products with a number of stabilisation instruments.[174]
Notably, the objective in Art. 39(1)(b) TFEU '*to ensure a fair standard of living for the agricultural community*' remains at the centre of CAP's regulatory efforts to this day. From today's perspective, the CAP should be aimed at securing farmers' earnings without expanding production.[175] In this context, since the Agenda 2000 reform, the CAP is divided between two funds, often referred as '*the two pillars'* of the CAP.[176] The first pillar refers to the European Agricultural Guarantee Fund (EAGF) which allocates 75,6% of the designated EU budget for the CAP. It includes direct payments to farmers aiming to support incomes. On the other hand, the European Agricultural Fund for Rural Development (EAFRD) represents 24,4% of the CAP budget and builds the second pillar. This fund provides payments or support for rural development.[177] Both pillars are laid down in the CAP Strategic Plans Regulation (EU) 2021/2115[178] and include payments to environmentally related measures. Among other instruments, the first pillar provides - within the context of the rules of conditionality - that farmers must fulfil certain requirements in the area of environmental protection in order to receive this support. Although this conditionality may lead to a loss of income for farmers, it does not contradict the objective of ensuring '*a fair standard of living.'*[179]
Furthermore, Art. 39(1)(d) addresses '*to assure the availability of supplies'*, which means that the EU food system needs an adequate availability of food. Historically, this objective is a remnant of the Treaty of Rome, in which the founding fathers intended to build a supranational

[171] (n 19) Art. 39 para 2.
[172] (n 30) Art. 39 AEUV para 9.
[173] (n 147) 50.
[174] (n 30) Art. 39 AEUV para 10.
[175] *Ibid* para 12.
[176] European Commission, '*The Common Agricultural Policy: an overview'* (2023), available at: https://eu-cap-network.ec.europa.eu/common-agricultural-policy-overview_en (accessed 20 Sep 2024).
[177] Katharine Heyl and others, '*The Common Agricultural Policy beyond 2020: A critical review in light of global environmental goals'* (2020) 30(1) 95-106(96), available at: https://onlinelibrary.wiley.com/doi/10.1111/reel.12351 (accessed 22 Sep 2024).
[178] Regulation (EU) 2021/2115 of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 [2021] OJ L435/1.
[179] (n 30) Art. 39 AEUV para 10.

food system able to grant availability and accessibility of food to all people living on the European territory against the background of the supply situation in the Member States at the end of the 1950s.[180] The last-mentioned objective - Art. 39(1)(e) TFEU - to ensure that supplies reach consumers at reasonable prices is closely related to this. The objective of food availability and accessibility at reasonable prices is underpinned by the *Farm to Fork Strategy*[181] initiated by the Green Deal, which speaks of a transition to '*a fair, healthy and environmentally-friendly food system.'* This strategy is also well-connected to the Biodiversity Strategy, which was published at the same time, since long-term food security in the EU can only be guaranteed if ecosystems that support the growth of cereals, fruits and vegetables are conserved and restored.
Finally, it should be noted that the agricultural policy objectives of the CAP in Art. 39 TFEU cannot be considered a stand-alone source, especially when creating a legal act in the area of agriculture. In fact, the '*integration clause'* of Art. 11 TFEU, which states that '*environmental protection requirements must be integrated'* into the Union's policies and activities be taken into account.

bb) Biodiversity Protection Objective in the CAP 2023-2027

In order to give substance to the CAP objectives in Art. 39(1) TFEU, it is necessary to formulate tailored targets in the context of the current challenges of our time. In this respect, the CAP reform for the period 2023-2027, which has been in force since 1 January 2023, takes a new structural approach which is intended to give the Member States more responsibility. Thus, Regulation (EU) 2021/2115 sets the basic policy parameters, such as the specific objectives of the CAP and its basic requirements which are implemented by the Member States in their CAP Strategic Plans.[182] This new implementation instrument aims to give more flexibility and subsidiarity for Member States in order to better take into account local conditions and needs of agricultural activity. Primarily, this approach has been chosen in order to maximise the contribution to achieving the CAP objectives.[183] The CAP 2023-2027 is characterised by a transition towards a more sustainable agriculture shaped by the EU commitments emerging from the Green Deal.[184] It is emphasised that the current architecture of the CAP should reflect greater ambition in reducing negative impacts on the environment and climate, including biodiversity.[185] Following from this, Regulation (EU) 2021/2115 should contribute to mainstreaming biodiversity action. In addition, when assessing the CAP Strategic Plans submitted by the Member States, the Commission should take into account their consistency and contribution to the Union targets set in both the *Farm to Fork Strategy* and the *Biodiversity Strategy*.[186] As a result, three main objectives for the CAP 2023-2027 have been formulated in Art. 5 of the Regulation, (EU) 2021/2115, which aim to further improve the sustainable development of farming, food and rural areas. More precisely, three sustainability dimensions are targeted - ensuring long-term food security (a), supporting and strengthening environmental protection (b) and

[180] Paolo Borghi, '*Food Security and the Role of the EU'* (2023) DPCE Online Vol 59(2), available at: https://www.dpceonline.it/index.php/dpceonline/article/view/1963/1974 (accessed 20 Aug 2024).
[181] European Commission, 'A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System' COM (2020) 381 final.
[182] (n 178) Recital 3, 22.
[183] *Ibid* Recital 3.
[184] *Ibid* Recital 23, 125.
[185] *Ibid* Recital 30.
[186] *Ibid* Recital 122.

strengthening the socio-economic fabric of rural areas (c). Furthermore, ten specific objectives are formulated in Art. 6 of the Regulation, whereby the nine targets in Art. 6(1)(a)-(i) underline the three sustainability dimensions. The tenth target in Art. 6(2) serves as a cross-cutting objective fostering knowledge and innovation.[187] Among the specific objectives, Art. 6(1)(d)-(f) address climatic and environmental ambitions. In this context, the CAP Strategic Plans play a key role, as they are the main instrument for implementing these objectives at Member State level. According to Art. 105(1) of the Regulation (EU) 2021/2115, through their CAP Strategic Plans, Member States should show more ambition than in previous years in respect of the specific environmental and climate-related objectives. Insofar, Member States are required to explain how they approach this ambition tacking into account their '*contributions to achieving the Union's targets for 2030 set out in the Farm to Fork Strategy and the EU Biodiversity Strategy.'*[188] The latter strategy includes an explicit mandate for bringing nature back to agricultural land. Insofar, as a specific objective, 25 % of the EU`s agricultural land must be organically farmed by 2030 and the uptake of agro-ecological practices should be significantly increased.[189] In order to achieve the goal of increasing the share of agricultural land in the EU under organic farming to 25% by 2030, the EU Commission published an action plan for the development of organic production in April 2021.[190] In this plan, which is structured in three strategic axes with 23 concrete actions, it is emphasised that land which is farmed organically has about 30% more biodiversity than land farmed conventionally.

Against this backdrop, the CAP´s specific objectives explicitly stating in Art. 6(1)(f) that the CAP should contribute to halting biodiversity loss. Indirectly, Art. 6(1)(e) also refers to combating biodiversity loss, as it calls for fostering sustainable development and efficient management of natural resources '*including by reducing chemical dependency.'* As we have seen from above, intensive agriculture practice has a significant negative impact on biodiversity, especially through the use of pollution from agrochemicals. As such, the Biodiversity Strategy 2030 sets the goal to reduce 50% of the use of chemical and hazardous pesticides in the agricultural land sector by 2030.[191] Specifically, actions are planned to reduce by 50% both the overall use and the risks associated with chemical pesticides, as well as the use of more hazardous pesticides by 2030.[192] In order to reach this reduction objective, it was planned to revise Directive 2009/128/EC, commonly referred to as the Sustainable Pesticide Use Directive.[193] However, as things stand today, this objective can be considered a failure. After the Commission proposed, in June 2022, a draft for a regulation on the sustainable use of pesticides which was supposed to repeal and replace Directive 2009/128/EC with legally binding targets at EU level to reduce 50% the use and the risk of chemical pesticides and more hazardous pesticides by 2030,[194] the

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[187] European Parliament, '*The Common Agricultural Policy Strategic Plans Regulation'* (2023) Fact Sheets on the European Union, available at: https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_3.2.4.pdf (accessed 22 Sep 2024).

[188] (n 178) Recital 123.

[189] *Ibid* p. 8.

[190] European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an Action Plan for the Development of Organic Production' COM (2021) 141 final/2.

[191] (n 12) 2.2.2.

[192] *Ibid.*

[193] Directive 2009/128/EC of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides [2009] OJ L309/71.

[194] Proposal for a Regulation on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115, COM (2022) 305 final.

European Parliament voted to reject the proposal with over 200 amendments in November 2023. Following a lack of progress in Council discussions, the Commission announced, in February 2024, its intention to withdraw its proposal which was completed with a withdrawal decision in May 2024.[195] Since it is economically difficult to manage a transition to reduced reliance on synthetic pesticides, several farming groups protested against EU´s environmental ambitions at the beginning of the year 2024, claiming those are not accompanied by sufficient budgets to reward them.[196] This latest example shows that although the EU`s CAP and biodiversity protection objectives have been interlinked over the past five years, since the Green Deal was launched, greener policy approaches continue to face resistance and friction among stakeholders in the implementation phase. policy changes continue to face resistance and friction among stakeholders in the implementation phase.

After all, the challenge of the CAP´s multi-objective policy design is to find a balance among all three sustainability dimensions. The economic objectives of the CAP, particularly enhancing long-term food security, market orientation, and farm competitiveness, may lead to trade-offs in measures focusing on biodiversity protection, which could ultimately fail to halt the ongoing trend of biodiversity loss. Implementing more nature-based solutions may lead to higher production costs, and also to lower crop and livestock productivity.[197] This could negatively affect farm incomes and increase product prices. However, instead of ignoring this trade-off, those farming measures should be identified and supported which promote synergies between the conflicting objectives.[198] Insofar, the new CAP 2023-2027 includes three environmental-instruments aiming to be supportive for agricultural biodiversity protection which should be incorporated in the CAP Strategic Plans. In the following section these instruments are examined in more detail.

b) Instruments for enhancing biodiversity under the CAP 2023-2027

In order to promote environmental sustainability in the agricultural realm, the CAP Strategic Plans Regulation (EU) 2021/2115 establishes a cohesive framework for the CAP 2023-2027 providing three main instruments. First of all, there is the instrument of 'enhanced conditionality' setting up criteria for famers in order to receive direct or annual payments under the CAP. Secondly, new 'eco-schemes' have been introduced under the first pillar, the European Agricultural Guarantee Fund (EAGF), representing voluntary schemes for climate, environmental, and animal welfare purposes. Lastly, payments and support for agri-environment-climate measures (AECM) under the second pillar, the European Agricultural Fund for Rural Development (EAFRD) have been kept in place.[199]

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[195] European Parliament, '*Proposal for a regulation on the sustainable use of plant protection products'* (2024) Legislative Train Schedule, available at: https://www.europarl.europa.eu/legislative-train/spotlight-JD22/file-sustainable-use-of-pesticides-–-revision-of-the-eu-rules (accessed 22 Aug 2024).

[196] Maria Simon Arboleas, '*Tractors flood Brussels asking for change in EU policy'* (2024) Euractiv, available at: https://www.euractiv.com/section/agriculture-food/news/tractors-flood-brussels-asking-for-change-in-eu-policy/ (accessed 22 Aug 2024).

[197] Herve Guyormard and others, '*How the Green Architecture of the 2023–2027 Common Agricultural Policy could have been greener'* (2023) Ambio 52(8) 1327-1338(1335), available at: https://link.springer.com/article/10.1007/s13280-023-01861-0 (accessed 22 Sep 2024).

[198] Guy Pe'er and others, '*How can the European Common Agricultural Policy help halt biodiversity loss? Recommendations by over 300 experts'* (2022) Conservation Letters, Vol 15(6), p. 2, available at: https://pti-agriambio.csic.es/wp-content/uploads/2023/12/Conservation-Letters-2022-Pe-er-How-can-the-European-Common-Agricultural-Policy-help-halt-biodiversity-loss-.pdf (accessed 22 Sep 2022).

[199] *Ibid.*

aa) The instrument of 'enhanced conditionality'

When it comes to CAP´s system to support farmers´ income, an annual area-based decoupled payment continues to be the most relevant type of intervention under the CAP 2023-2027. These payments, now laid down in Art. 16(2) in conjunction with Art. 20-31 of Regulation EU 2021/2115 represent nearly 32% of the total CAP expenditure and are decoupled from volume and type of production.[200] For are-based payments, according to Art. 18(1), Member States are required to set a minimum area, which should be a threshold for farmers to be eligible for these payments.

However, in order to be fully eligible for these area-based CAP payments, farmers and other beneficiaries need to comply with a basic set of standards in the areas of environment, climate, plant health and animal welfare. To be more precise, direct payments under both pillars are conditional to compliance with statutory management requirements (SMRs) and Good Agricultural and Environmental Conditions (GAECs) standards.[201] Based on the previous system of cross-compliance and greening requirements,[202] the instrument of conditionality is laid down in Art. 12(1) as it imposes an administrative penalty if the beneficiary of payment does not comply with the requirements and standards. The EU Commission is speaking of an '*enhanced conditionality'* since new SMRs and new GAEC standards were added promising more environmental ambition compared to the precious conditions.[203]

First of all, the SMRs are consisting of a selection of certain EU legal acts which need to be fully implemented by Member States in order to become effective at farm level. In order to receive the full amount of payment, farmers and other beneficiaries must fulfil obligations under these EU legal acts, listed in Annex III of the Regulation (EU) 2021/2115.[204] Among the referred legislation, both EU Nature Directives are listed as SMR 3 and SMR 4. As presented above, Art. 6(1),(2) Habitats Directive obliges Member States to establish conservation measures in designated Natura 2000 sites and to prevent significant disturbance within these special areas. When a Natura 2000 site is concerned, farmers may not carry out certain agricultural practices in order to comply with the obligations in Art. 6(1), (2) of the Habitats Directive. Examples include prohibiting farmers from ploughing grasslands, drainage on the sites or altering the site's relief.[205] Furthermore, SMR 8 is referring to the obligations under the sustainable use of pesticides Directive 2009/128/EC.[206] In particular, it is relevant for farmers to fulfil the obligations under Art. 12, which limits pesticide use in protected areas under the Natura 2000 regime. In addition, special obligations for the handling and storage of pesticides are provided in Art. 13, which may not endanger the environment. However, the area covered by Natura 2000 sites is not all-encompassing, especially not in terms of agricultural land, as

[200] European Commission, '*Approved 28 CAP Strategic Plans (2023-2027) – Summary overview for 27 Member States'* (2023) p. 18, available at: https://www.agrotikianaptixi.gr/wp-content/uploads/2024/03/approved-28-cap-strategic-plans-2023-27.pdf (accessed 22 Sep 2024).
[201] *Ibid* p 15.
[202] (n 178) Recital 41.
[203] (n 200) p. 44.
[204] (n 178) Recital 44.
[205] Bird Life International, '*The paper tigers of the Common Agricultural Policy'* (2023) p. 9, available at: https://www.birdlife.org/wp-content/uploads/2024/01/The-paper-tigers-of-the-Common-Agricultural-Policy-SMR-analysis.pdf (accessed 23 Sep 2024).
[206] *Ibid.*

just 18.6% of the EU's land area is covered by these sites.[207] It is therefore necessary to include the newly adopted Nature Restoration Regulation in the statutory management requirements in order to incorporate its holistic approach - in particular to the obligations arising from Art.11 for the restoration of agricultural ecosystems. This would ensure - within the framework of the instrument of conditionality - that farmers not only avoid damaging biodiversity, but also take proactive measures to restore it.

Moreover, the conditionality instrument is enhanced though increased requirements under Good Agricultural and Environmental Conditions (GAECS). Insofar, Annex III of Regulation (EU) 2021/2115 defines nine GAEC standards regarding different features. According to Art. 13(1) of Regulation (EU) 2021/2115, Member States need to set at national or regional level in their CAP Strategic Plans minimum standards for farmers and other beneficiaries which are in line with the GAEC standards set out in Annex III. This shall concern agricultural areas and also areas no longer used for production purposes. Due to the ineffectiveness for biodiversity of the former greening requirements for the CAP 2013-2022, which was mainly driven by Member State´s and farmers´ flexibilities,[208] the CAP 2023-2027 added a specific GAEC for biodiversity. As such, GAEC 8 requires to devote a minimum share of at least 4% of arable land to non-productive areas or features, including land-lying fallow. The shift towards non-productive areas on agricultural land is a step in the right direction due to positive effects on biodiversity in the case of wildlife. However, the scope of application for this requirement is limited to arable land, but should be opened up for agricultural land in general, including grassland and permanent crops.[209] In consequence, this trade-off is a missed opportunity for biodiversity on agricultural land and not in line with the targets in the Nature Restoration Regulation. The future CAP Strategic Plans should contribute to a general improvement of biodiversity on Member States´ ecosystems and landscapes, and not only focusing on on-farm biodiversity.[210] Another trade-off is recognisable regarding the minimum rate of 4% which is not in line with the postulated goal in the Biodiversity Strategy 2030. According to the latter, at least 10% of utilised agricultural area should be bring back under high diversity landscapes.[211] Lastly, the whole instrument of conditionality with regard to both the SMRs and GAECs have deficiencies in implementing those standards which is established by national rules. In addition, it is necessary to implement them at farm-level.[212] The implementation obligation of the Member states is also visible in their monitoring obligations with regard to compliance with the respective standards. In this context, Member States need to set up and operate an integrated system including an area monitoring system according to Art. 65(1),(4)(b) Regulation (EU) 2021/2116.[213] However, there is lack of clarity within these provisions on how Member

[207] European Environment Agency, '*Natura 2000 sites designated under the EU Habitats and Birds Directives'* (2022), available at: https://www.eea.europa.eu/en/analysis/indicators/natura-2000-sites-designated-under (accessed 23 Sep 2024).

[208] Guy Pe'er and others, '*Supplementary Materials for a greener path for the EU Common Agricultural Policy'* (2019) Science 365(6452) 449(469), available at: https://www.science.org/doi/10.1126/science.aax3146 (accessed 23 Sep 2024).

[209] (n 198) p. 4.

[210] CONCITO, *'Green reform of EU`s agricultural policy'* (2023) available at: https://concito.dk/en/concito-blog-gen/groen-reform-eus-landbrugspolitik (accessed 24 Sep 2024).

[211] (n 55) 2.2.4.

[212] (n 205) p. 6.

[213] Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 [2021] OJ L435/187.

States should track there agricultural data regarding farming conditions under SMR and GAEC.

bb) The CAP´s voluntary instruments for enhanced biodiversity

In a next step eco-schemes and agri-environment-climate measures should be examined together as they share several features including going beyond the conditionality requirement. Starting with eco-schemes established in Art. 31(1) Regulation (EU) 2021/2115, which is the main innovation of the CAP 2023-2027,[214] Member States shall provide voluntary schemes for climate, the environment and animal welfare. Their purpose is to support those farmers with an extra annual payment, who are adopting practices that diminish the negative impact of agriculture on the environment and climate.[215] In other words, incentives are to be established for the implementation of measures that benefit the climate and the environment. The annual payment relates to the eligible hectare area and can be granted in two ways under Art. 31(7), either in form of an additional payment for basic income support (a) or in the form of a compensation payment due to the additional costs and income loss (b). It can be derived from the wording of Art. 31(1) that Member States are obliged to include these schemes in their CAP Strategic Plans (‘*shall establish’*), but they are optional for farmers (‘*voluntary’*). Each eco-schemes should cover at least two areas of action among those listed in 31(4)(a)-(g), whereby Art. 31(4)(e) explicitly mentions the area of biodiversity protection.

Remarkably, eco-schemes are financed by pillar 1, the European Agricultural Guarantee Fund (EAGF), and thus solely by the Union, whereby Annex IX of the Regulation breaks down for each Member State how much each will receive for direct payments regarding the respective years 2023-2027. According to Art. 97(1) of the Regulation, at least 25% of these allocations shall be reserved for eco-schemes. This mandatory allocation mechanism for eco-schemes creates financial stability for the Member States with regard to providing a certain amount of payments for environmental related measures.

As the drafts for the CAP Strategic Plans were received by the Commission from the Member States by 1 January 2022 at the latest in accordance with Art. 118(1) of the Regulation, and the final evaluation and approval procedure by the Commission has also been completed, the Strategic Plans could enter into force from 1 January 2023. In this respect, it is worth taking a look at the CAP Strategic Plans regarding the implemented eco-schemes. It is worth to note that 82% among the total of 158 eco-schemes are granted through compensation payments. Furthermore, at EU level, those eco-schemes addressing biodiversity and landscape features constitute nearly 20%.[216] For instance, Germany included biodiversity related eco-schemes in form of management of grassland in a more nature-conserving way, such as reducing the use of pesticides and fertilisers.[217] Spain is focusing on long-term biodiversity goals with organic farming. It provides financial support for 1,281,937ha in order to be able to cultivate 20% of its agricultural land with organic farming by 2030.[218] In Hungary, farmers can receive a lump sum of EUR 80 per

[214] (n 197) 1328.
[215] (n 200) p. 63.
[216] *Ibid* p. 64.
[217] European Commission, ‘*At a glance: Germany´s CAP Strategic Plan’* (2023) p. 3, available at: https://agriculture.ec.europa.eu/document/download/3b97b15c-74fa-4d77-aae7-490eb0670ca7_en?filename=csp-at-a-glance-germany_en.pdf (accessed 23 Sep 2024).
[218] European Commission, ‘*At a glance: Spain´s CAP Strategic Plan’* (2023) p. 4, available at*:* https://agriculture.ec.europa.eu/document/download/337fcbc6-19a2-4c91-945b-248d63a0134c_en?filename=csp-a-a-glance-spain_en.pdf (accessed 23 Sep 2024).

hectare annually for the implementation of measures to protect soil and water biodiversity on a total subsidised area of 2.5 million hectares.[219]
These three examples show that the implementation of eco-schemes with regard to biodiversity in the CAP Strategic Plans could not be more different among the Member States. However, this is due to the different regional, climatic and landscape characteristics of the EU Member States.
What raises more questions is certainly that Member States also have different ambitions when it comes to eco-schemes related to biodiversity protection. In view of the importance of biodiversity, as set out as a political Union objective in the Biodiversity Strategy, it would have been more effective to set a minimum level solely for the area biodiversity protection under Art. 31(4)(e) of Regulation (EU) 2021/2115 by eco-schemes. At least one that exceeds the threshold of 20%.
It should be added that eco-scheme payments are purely measure-related, without taking into account any specific result in biodiversity enhancement. An answer to this shortcoming was recently provided by the Strategic Dialogue on the Future of EU Agriculture initiated by the Commission, which, among other things, discussed proposals for the new CAP 2028-2035. In its recommendations published in a final report in September 2024, rewarding payments should be established in order to continue providing ecosystem services. These rewards should be structured in such a way that they are '*conditioned on quantifiable outcomes that are measured by robust indicators.'*[220] This approach would also enhance monitoring and accountability, making it more effective in ensuring compliance with the biodiversity goals.

Referring to the subsidy instrument promoting sustainable agricultural practices under the co-financed European Agricultural Fund for Rural Development (EAFRD) in Pillar II, Member States are obliged, in accordance with Article 70(1) of Regulation (EU) 2021/2115, to include interventions in the form of payments or support for environmental and climate-related management commitments in their CAP Strategic Plans. These commitments were the main tool to conserve biodiversity on European farmland until the end of the CAP 2013-2022 and can be classified as horizontal and zonal schemes. The former are designed to fit easily into farm management systems such as organic management, whereas zonal schemes require developed complex management plans for targeted species or ecosystems.[221] In contrast to eco-schemes, under Art. 70(6), these agri-environment-climate measures are usually granted for a period of 5-7 years, whereby even longer periods can be agreed in individual cases. There is also a minimum financial allocation for interventions addressing environmental and climate-related specific objectives in Art. 93(1) of the Regulation amounting to at least 35% of the total funding amounts allocated to the individual Member States in Annex IX.

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[219] European Commission, '*At a glance: Hungary's CAP Strategic Plan'* (2023) p. 4, available at: https://agriculture.ec.europa.eu/document/download/98026bcc-711c-465f-9db2-1ff3d615f5b9_en?filename=csp-at-a-glance-hungary_en.pdf (accessed 23 Sep 2024).
[220] European Commission, '*Final Report of the Strategic Dialogue on the Future of EU Agriculture'* (2024), available at: https://agriculture.ec.europa.eu/document/download/171329ff-0f50-4fa5-946f-aea11032172e_en?filename=strategic-dialogue-report-2024_en.pdf p. 44 (accessed 24 Sep 2024).
[221] Péter Batáry and others, '*The role of agri-environment schemes in conservation and environmental management'* (2015) Conservation Biology, 29(4) 1006-1016(1008), available at: https://conbio.onlinelibrary.wiley.com/doi/10.1111/cobi.12536 (accessed 23 Sep 2024).

The practice in the past has shown that tailored commitments regarding complex agricultural ecosystems designed for longer periods of time are effective tools for biodiversity, and should therefore also be integrated into the CAP 2023-2027 Strategic Plans.

2. The Interplay between CAP Strategic Plans and National Restoration Plans

The EU policy instruments under the CAP Strategic Plans and the National Restoration Plans represent new and innovative approaches in their respective fields. As will be the case with the adoption of National Restoration Plan in the upcoming years, the CAP Strategic Plan has transferred a significant burden on Member States to implement EU provisions. This trend of Union-wide goal-setting with decentralised implementation gives Member States a number of flexibilities. In view of the regional and local characteristics that must be taken into account in both agriculture and nature restoration - with the involvement of the stakeholders concerned - the means of national plans are also in line with the principle of subsidiarity in Art. 5(3) TEU. However, as we have seen, some of the respective Union's objectives differ significantly from one another. On the one hand, the Nature Restoration Law promises a gradual restoration of ecosystems; on the other hand, sustainable agriculture also includes economic aspects such as securing farmers' incomes and food security and affordability.

The Union legislator has recognised this potential for a conflict. Therefore, according to Art. 14(14)(h) of the Nature Restoration Regulation, Member States should take into account the CAP Strategic Plan Regulation 2021/2115 in their preparation for their national restoration plans. In addition, pursuant to Art. 15(5) of the Nature Restoration Regulation, the national restoration plan should have an overview of the interplay between measures included in both national plans. In contrast, EU Nature Restoration Regulation (EU) 2024/1991 has not yet been integrated into Annex XIII of Regulation (EU) 2021/2115 where Union legislative acts are listed which are relevant for CAP Strategic Plan's consistency. However, an amendment to this Annex is to be expected. Against this background, the following sections seek to explore ways of harmonizing the relevant biodiversity measures, while also identifying potential conflicts arising from the integration of the two plans.

a) Harmonising Biodiversity Measures in the CAP Strategic Plan and Nature Restoration Plan

First of all, it should be noted that all measures necessary to fulfil the obligations under Art. 4-13 of the Nature Restoration Regulation should be listed in the national restoration plans under Art. 15(1) of that Regulation. This includes the restoration measures concerning agricultural ecosystems in Art. 11. As the environmental measures adopted in the CAP Strategic Plans relate exclusively to on-farm biodiversity, they must be aligned with Article 11 of the Nature Restoration Regulation. In their preparatory work, Member States need to identify synergies between restoration and agriculture, whereby, in accordance with Art. 14(10) Nature Restoration Regulation, they shall identify existing agricultural practices that contribute to the restoration objectives. Against this background, the exact implementation of the Good Agricultural and Environmental Conditions (GAECS) - in this respect GAEC 8 – and all biodiversity-related eco-schemes and agri-environment-climate measures must be transferred to the respective national restoration plan. Further on, it is necessary to identify which two indicators among those mentioned in Art. 11(2) – grassland butterfly index, stock of organic carbon in cropland mineral soils and share of agricultural land with high-diversity landscape features –

are covered in the concerned CAP Strategic Plan in order to decide which indicators should achieve an increasing trend at national level. If these trends are not reflected at all in the CAP Strategic Plan, the concerned Member State has to amend it in accordance with the procedure laid down in Art. 119(1)-(10) of Regulation (EU) 2021/2115. The coherence of the measures is particularly important in view of the fact that, according to Art. 15(3)(j) of the Nature Restoration Regulation, the national restoration plan should give reasons why the selected indicators are suitable for the enhancement of biodiversity in agricultural land.
Another key factor in harmonising the two plans is the timeline for implementing the restoration measures. As we have seen, the first draft of a national restoration plan contains only a detailed list of measures up to 1 July 2032. As such, Art. 15(3)(n) of the Nature Restoration Regulation requires to include the timetable for the planned measures. As far as on-farm biodiversity is concerned, GAEC conditions and eco-schemes are linked to the conduct of farmers, which amount to annual payments. But the announced restoration measures will be implemented by farmers at least for the full period of the CAP 2023-2027, until 31 December 2027. As the restoration plans provide for a precise scope of measures until July 2032, it could be difficult to include this gap without a subsequent CAP strategic plan. In this respect, it is advisable to link the new CAP reform 2028-2035 more closely to the objectives of the Restoration Regulation.
Furthermore, the process of harmonisation regarding measures of both national plans requires stakeholder participation once again. Since at least eco-schemes and agri-environment-climate measures are implemented on a voluntary basis by farmers, there must be appropriate participation for any necessary adaptation. As such, the procedure laid down in Art. 14(20) serves as a legal basis and should be used by Member States to inform farmers about the obligations of the Nature Restoration Regulation.

b) Funding conflict between CAP Strategic Plans and National Restoration Plans

The need to harmonise the measures in the two respective national plans for the protection of biodiversity in agricultural ecosystems is challenged by different financing bases. As stated, the national restoration plan must specify the estimated financing requirements in accordance with Article 15(3)(u) of the Nature Restoration Regulation. When it comes to agricultural biodiversity measures, eco-schemes are funded under the European Agricultural Guarantee Fund (pillar 1), whereby at least 25% of these allocations shall be reserved for eco-schemes. As presented, it is not regulated how large the share for biodiversity measures is. However, based on the CAP strategic plans submitted by the Member States, it was determined that this share is around 20%. These proportion for biodiversity related eco-schemes are designed for annual payments, mostly to compensate farmers' extra efforts.
However, the Nature Restoration Regulation demands for long-term funding schemes which are necessary to deliver enhanced benefits of restoration.[222] This divergence between short-term payments and the long-term funding mechanism is further intensified by the fact that Member States are not obliged to reprogramme existing fundings under the CAP or other funding instruments in accordance with Art. 14(11) of the Nature Restoration Regulation. Without the need to reprogramme CAP funding, the coordination of funding mechanism between Nature Restoration and CAP could be limited. In order to provide clarity on funding of the nature restoration

[222] (n 13) Recital 54.

measures, it is proposed to implement a dedicated EU nature restoration fund in the next multiannual financial framework which should be managed flexibly at national level.[223]

III. Part 2: Legal Enforcement Mechanism for EU Biodiversity Legislation

Chapter A: Private and Public Enforcement of EU Biodiversity Legislation

1. The role of national courts in private enforcement of EU biodiversity legislation

A comprehensive set of EU laws for the conservation and restoration of nature in Europe is not enough on its own. The obligations arising from the Nature Directives and the recently adopted Nature Restoration Regulation must also be effectively enforced. For ensuring compliance with EU law, the private enforcement model plays a crucial role - also in matters relating to biodiversity. Through this model, private parties such as individuals, companies or non-governmental organisations bring proceedings before national courts for alleged infringements of their rights under EU law.[224] In this respect, national courts are the main impetus for the effective enforcement of EU law. This active role of the national courts can be first of all explained by the European Court of Justice´s early *Van Gend en Loos* judgement, where it clarified that the EU constitutes 'a *new legal order of international law*.'[225] In this vein, the Court of Justice derived the principle of direct effect, according to which EU law not only creates obligations for individuals but is '*also intended to confer upon them rights which become part of their legal heritage.'* Therefore, under the condition that the EU provision is sufficiently clear and unconditional, it can be invoked by individuals before national courts.[226] A year later, the principle of primacy was established in the *Costa v ENEL* judgement, which held that EU law must take precedence over any provision of national law.[227] With the establishment of these fundamental principles, national courts rise to the main addressee to enforce EU law under the private or decentralised enforcement mechanism. It also has a complementary function to the limited public enforcement tools.[228] In the further case-law, the Court of Justice emphasised the role of the national courts with reference to the principle of sincere cooperation in Art. 4(3) TEU. Insofar, it is for the national courts to ensure the full application of EU law and the respective judicial protection of individual´s rights under that law.[229] Or to put it more clearly, national courts are '*ordinary courts within the European Union legal order*.'[230]

The application of EU law by national courts is underpinned by the case law of the Court of Justice, particularly, in the context of the preliminary reference procedure in Art. 267(1) TFEU. As such, this judicial cooperation instrument is established to ensure the proper application and uniform interpretation of EU law in all Member States.[231]

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[223] WWF – World Wide Fund for Nature, '*Call for a dedicated EU Nature Restoration Fund'* (2024), available at: https://www.wwf.eu/?14503641/Call-for-a-dedicated-EU-Nature-Restoration-Fund (accessed 24 Sep 2024).
[224] Folkert Wilman, *Private Enforcement of EU Law Before National Courts* (Edward Elgar Publishing 2015) p 4, available at: https://china.elgaronline.com/monobook/9781784718480.xml (accessed 25 Sep 2024).
[225] Case C-26/62 Van Gend en Loos v Netherlands Inland Revenue Administration [1963] ECLI:EU:C:1963:1 para 3.
[226] *Ibid* para 4.
[227] Case C-6/64 Flaminio Costa v E:N.E.L. [1964] ECLI:EU:C:1964:66.
[228] European Institute of Public Administration (EIPA), '*Evolving Challenges and New Approaches in EU Law Enforcement'* (2021) p. 6, available at: https://www.eipa.eu/wp-content/uploads/2021/11/EIPA_Evolving-Challenges-and-New-Approaches-in-EU-Law-Enforcement.pdf (accessed 25 Sep 2024).
[229] Opinion 1/09 [2011] ECLI:EU:C:2011:123 para 68.
[230] *Ibid* para 80.
[231] Case C-283/81 CILFIT v Ministry of Health [1982] ECLI:EU:C:1982:335 para 7.

However, the overall number of judgments issued by the Court of Justice related to the EU Nature Directives remains relatively limited.[232] Therefore, the case law of the national courts has played a major role in interpreting the relevant provisions of the Habitats and Wild Birds Directive. To clarify, it should be mentioned that according to the established case law of the Court of Justice, directives do not have horizontal direct effect, unless the transposition period has expired.[233] Due to this lack of direct effect, the Court of Justice has developed the principle of consistent interpretation, also known as 'indirect effect'. According to this principle, national law must, in so far as possible, be interpreted in the light of the wording and the purpose of the Directive.[234] In this respect, the national jurisprudence relating to the EU Nature Directive are mainly concerned with the question of how a consistent interpretation of the national transposition law can be achieved which is outlined in section (a). On the other hand, it is examined in section (b), in which cases the national courts have made use of the preliminary reference procedure, and how the Court of Justice has shaped Natura 2000 site protection in this regard.

a) National court´s consistent interpretation regarding EU Nature Directives

By comparing national court´s interpretation of the provisions regarding the EU Nature Directive, it is evident that the level of consistent interpretation differs significantly across the Member States. This is particularly relevant since preliminary ruling procedures are rarely initiated; otherwise, the Court of Justice would be buried under pending cases.[235]

Of particular interest in the judgements of the national courts are the interpretations of the transposition laws with regard to the protection mechanism established by Art. 6 Habitats Directive. Given the extensive volume of national judgments, an evaluation will be made by way of example with respect to select issues of legal interpretation. The question of whether or not an appropriate assessment should be carried out is always relevant. The decisive factor is whether a project or plan exist within the meaning of Art. 6(3) of the Habitats Directive since there is no definition included in this regard. Thus, on a case-by-case level, national courts must decide this through an interpretative approach, while there are many different decisions on this specific field.[236] Based on the established case law of the Court of Justice that an impact assessment must be undertaken if there is a probability or risk that a project will significantly affect the integrity of the Natura site concerned,[237] the German Federal Administrative Court (Bundesverwaltungsgericht) had to decide whether the planned low-altitude flying by military aircraft over a heath area is a project within the meaning of Art. 6(3).[238] In this respect, the Court has narrowed the term 'project,' because it has excluded human activities that are not related to the construction or operation in cases where there is no option of assessing them through existing drafts, concepts or practice. However, in this case, this narrowed interpretation did not have any

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[232] Wildlife and Countryside, '*The Role of Case Law and Increasing Efficiency in Implementing the Birds and Habitats Directive'* (2016) p 1, available at: https://www.wcl.org.uk/docs/Joint_Links_Birds_Habitats_Directives_Case_Law.pdf (accessed 25 Sep 2024).

[233] Case C-148/78 Ratti [1979] ECLI:EU:C:1979:110.

[234] Case C-80/86 Kolpinghuis Nijmegen BV [1987] ECLI:EU:C:1987:431 para 12.

[235] Reinhard Slepcevic, '*The judicial enforcement of EU law through national courts: possibilities and limits'* (2009) Journal of European Public Policy 16(3) 378-394(383), available at: https://www.tandfonline.com/doi/full/10.1080/13501760802662847#d1e209 (accessed 25 Sep 2024).

[236] Stefan Möckel, 'The terms 'project' and 'plan' in the Natura 2000 appropriate assessment' (2017) Nature Conservation 23, 31-56(32) available at: https://natureconservation.pensoft.net/article/13601/ (accessed 25 Sep 2024).

[237] (n 108) para 43.

[238] BVerwG, 4 C 3.12 - Judgment of 10 April 2013, para 30, available at: https://www.bverwg.de/100413U4C3.12.0 (accessed 25 Sep 2024).

consequences, since it became known that the air force wanted to use the area for low-altitude flying exercises with a certain regularity and intensity. Thus, an appropriate assessment under the Habitats Directive was necessary in this case. Anyhow, the question remains as to whether this narrowed interpretation fulfils the requirements of a consistent interpretation regarding the Habitats Directive. In any case, it is clear that activities not have been planned comprehensively or being constantly practiced can also represent negative impacts on the concerned site. As a consequence, such a blanket exemption from the impact assessment for plans is inappropriate under the protective nature of Art. 6(3).[239]

Another controversial point in the jurisprudence of national courts concerns the conduct of an appropriate assessment by itself since Art. 6(3) Habitats Directive does not provide methods for data collection or specific procedures for the risk analysis. However, it is clear from the established case law of the Court of Justice that the assessment must be conducted by the competent national authority in order to get certainty whether a plan or project will not have adverse effects on the site concerned. In the presence of reasonable scientific doubts, the national authority must refuse the development consent. In addition, the application of the derogation provision in Art. 6(4) Habitats Directive is not possible in the absence of knowledge of the effects.[240] With awareness of this ECJ judgment, the German Federal Administrative Court has developed a different standard, applying a more flexible approach when scientific uncertainty remains during the risk assessment. The case concerned a project to build a new section of a federal motorway and the associated assessment of whether there would be any significant adverse effects on the great crested newt. In the risk assessment of certain planned protective and compensatory measures, uncertainties about cause-effect relationships could not be dispelled at present, even if the relevant means of knowledge were exhausted. Nevertheless, the German Court found that it is permissible to work with forecasting probabilities which must be identified and justified.[241]

These two examples show that the national Supreme Courts in particular have at least minor nuances that deviate from ECJ case law, which by no means correspond to a consistent interpretation. This is due to the complex case-by-case assessment process in Art. 6(3) Habitats Directive.

b) Requesting preliminary rulings in the field of EU biodiversity laws

In spite of these minor nuances, the Court of Justice of the European Union has significantly shaped the legal architecture of the Natura 2000 network by its case law. With regard to the legal output, the preliminary reference procedure pursuant to Art. 267 TFEU plays a key role. In this sense, the '*judicial dialogue'* between national courts and the Court of Justice not only contributes to its most characteristic task under Art. 267(1) TFEU, namely to ensure a uniform interpretation of EU law. In fact, the preliminary procedure also helps to facilitate the application of EU law in the event of a presumed incompatibility between EU and national law. As such, it can be considered indirectly as a private enforcement tool.[242] The Court of Justice emphasises the latter by stating that the system set up by Art. 267 TFEU involves also '*the*

[239] (n 219) 40.
[240] Case C-43/10 Nomarchiaki Aitoloakarnanias [2012] ECLI:EU:C:2012:560 para 112, 114.
[241] BVerwG, 9 A 22.11, judgement of 28.03.2013 para 41, available at: https://www.bverwg.de/280313U9A22.11.0 (accessed 25 Sep 2024).
[242] (n 228) *Ibid.*

protection of individual rights conferred by that legal order.'[243] Therefore, individuals or private environmental organisations can enforce EU nature protection provisions through the national courts, while the Court of Justice assists by its means under the preliminary reference procedure. In this regard, it can be considered a an 'indirect enforcement' tool.[244] Moreover, it is crucial to highlight that according to the settled case-law of the Court of Justice, the results of a preliminary ruling are binding on the national court with regard to the main proceedings.[245] Against the backdrop of this cooperation instrument, often referred as the engine behind European integration,[246] judgments arising from requests for preliminary ruling regarding the EU Nature Directives constitute a uniform protection framework for Natura 2000 sites. Evolving clarifications of the relevant EU nature protection provisions by the Court have promoted the enforcement of EU law in favour of private initiatives. A review of the relevant jurisprudence reveals some patterns that characterise the legal features of the Natura 2000 network.

First of all, as we have seen above, it is essential for the aim of maintaining and restoring a '*favourable conservation status'* to conduct an appropriate assessment of plans and projects according to Art. 6(3) Habitats Directive, potentially having a significant adverse effect on the site. In this regard, the *Waddenzee* case[247] which is considered as a landmark judgment, addressed basic questions about the assessment requirements. The main proceedings were initiated by two private Dutch environmental organisations and reached the last instance before Raad van State (Netherlands). Substantially, these organisations have challenged the licences for the mechanical fishing of cockles in the special protection area (SPA) of the Waddenzee. In particular, the referring court wanted to know under what conditions an 'appropriate assessment' of the impact of the plan or project on the site concerned must be carried out in accordance with Art. 6(3) of the Habitats Directive. The findings of the Court clarify that it is to determine whether the plan or project has a significant effect on the concerned site.[248] Insofar, the court stated that triggering of the protection mechanism of Art. 6(3) does not demand for a definitive proof, rather, the mere probability of such an effect is sufficient.

Finally, in the *Sweetman v An Bord Pleanála* case,[249] dealing with the development consent for a Irish outer bypass road scheme which cross the site of Lough Corrib, the court further explained the assessment procedure in Art. 6(3) and differentiated between two stages. The first stage, as laid down in the first sentence of Art. 6(3), requires to make an appropriate assessment of the implications for the site caused by the plan or project in order to determine whether there is a likelihood of a significant effect on that site.[250] The second stage is laid down in the second sentence of Art. 6(3) and entails an assessement whether the plan or project will not adversely

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[243] (n 212) para 84.

[244] Morten Broberg, '*Preliminary Reference as a Means for Enforcing EU Law' in* András Jakab, and Dimitry Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States'* (Oxford Academics 2017) 99-111(99), available at: https://academic.oup.com/book/26766/chapter/195668226?login=true (accessed 26 Sep 2024).

[245] Case C-173/09 Elchinov v Natsionalna zdravnoosiguritelna kasa [2010] ECLI:EU:C:2010:581 para 29.

[246] Jos Hoevenaars, '*Lawyering Eurolaw: An Empirical Exploration into the practice of preliminary references'* (2020) European Papers 5(2) 777-797(777), available at: https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2020_2_6_Articles_SS1_3_Jos_Hoevenaars_00412.pdf (accessed 26 Sep 2024).

[247] (n 108).

[248] *Ibid* para 40.

[249] Case C-258/11 Sweetman v An Bord Pleanála [2013] ECLI:EU:C:2013:220.

[250] *Ibid* para 29.

affect the integrity of the site concerned.[251] For the latter requirement, the Court found that a site is not adversely affected, if it is able to be preserved at a favourable conservation status in accordance with Art. 1(e).[252]

Furthermore, with reference to the derogation clause in Art. 6(4) according to which a plan or project must be carried out for imperative reasons of overriding public interest, the Court has emphasised that the need to take compensatory measures should ensure that 'the overall coherence of Natura 2000' is protected.[253]

These comprehensive interpretations by the Court suggest that uniform guidelines will also be established for the Nature Restoration Regulation in the near future - at the latest after the national restoration plans have been finalised (end of 2027). In the context of private legal enforcement actions before national courts, it is likely that national courts will submit requests for a preliminary ruling to the Court of Justice. In spite of the extensive catalogue of definitions in Art. 3 of the Regulation, there is a need for clarification. In particular, it is possible that the national courts - with reference to the concerned national restoration plan - may wish to determine the circumstances under which the concept of '*satisfactory levels'* set out in Art. 14(5) of the Regulation is fulfilled. For example, this is necessary, for measures relating to agricultural ecosystems pursuant to Art. 11(2) with regard to two specific indicators. In this respect, it is also unclear when an '*increasing trend at national level'* is reached. The same concept of a satisfactory level applies to urban ecosystems under Article 8(3) of the Regulation regarding the 'increasing trend of urban tree canopy cover.' It is possible that a resident will sue the city before the local administrative court, claiming that the share of urban green space has decreased, contrary to Art. 8(1) of the Regulation or the city has not achieved an increasing trend in urban tree canopy cover.

It also remains unclear, with regard to the general non-deterioration obligation under Article 4(11), (12) of the Regulation, how the derogation provisions for areas outside Natura 2000 sites pursuant to Article 4(14), (15), and within Natura 2000 sites pursuant to Article 14(16), relate to this. In particular, it is necessary to clarify when 'force majeure' or a 'natural disaster' is applicable, since it is not defined in Art. 3. Therefore, it will be particularly interesting to see how the Court of Justice will assess natural disasters in relation to climate change phenomena since this has been proven to be a main driver of biodiversity loss. Finally, there is a need for a uniform interpretation regarding the derogation provision for national defense under Art. 7(1) of the Regulation. It remains entirely unclear when restoration measures related to a military area would be deemed incompatible with its continued military use.

In conclusion, it can be stated that, as with the EU Natura Directives, the Nature Restoration Regulation will require an engaged Court of Justice, which will establish a uniform EU restoration standard across all Member States through the integration engine of the preliminary reference procedure.

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[251] *Ibid* para 31.

[252] *Ibid* para 39.

[253] Joined Cases C-387/15 and C-388/15 Hilde Orleans and Others v Vlaams Gewest [2016] ECLI:EU:C:2016:583 para 62.

2. The role of the EU Commission in public enforcement of EU biodiversity legislation

a) The EU Commission's pathways to enforce biodiversity legislation

The counterpart to private enforcement is the public or centralised enforcement of EU law. Within the EU legal order, public enforcement activities are dominated by the Commission. Since Art. 4(3) TEU requires Member States' fulfilment of the obligations arising out of the Treaties, there is a need to ensure their compliance with EU law. This supervisory function is carried out by the EU Commission, which is often referred to as the '*Guardian of the Treaties.*'[254] This can be explained by the second sentence in Art. 17(1) TEU, which outlines the Commission´s task to ensure that the Treaties and secondary legislation are properly enforced.[255] Legally speaking, the EU Treaties provide for the Commission two general enforcement tools laid down in Art. 258 and 260 TFEU. At a first stage, the Commission has the authority under Art. 258 TFEU to initiate an infringement procedure if a Member State '*has failed to fulfil an obligation under the Treaties'*. It should be stated that Member States by itself in accordance with Art. 259 TFEU are also able to initiate infringement proceedings against other Member States, but this is hardly ever used in practice.[256] It is obvious - driven by political reasons - that Member States like to leave the area of treaty infringements to the Commission.[257] Therefore, it should be examined how the Commission is handling its enforcement authority in the field of EU biodiversity law.

First of all, according to the settled case-law of the Court of Justice, the Commission has discretion in deciding whether and when to initiate infringement proceedings. Insofar, only certain Member States can become subject of proceedings, although EU law violations are known in other Member States as well.[258] This discretionary power can be explained from a practical point of view, as the Commission is limited in its resources such as information-gathering capacity, manpower and financial means.[259] In this regard, already back in 1998, the Commission recognised that it cannot act as '*a kind of super enforcement authority*.[260] In contrast, it is argued that the Commission's decision whether or not to initiate an infringement procedure is also a political decision. This is because the wording '*shall promote the general interest of the Union'* in Art. 17(1) TEU implies that the Commission acts as a political organ that makes policy choices.[261] Some advocate for a zero-tolerance approach to environmental issues, calling for the Commission to initiate infringement procedures in a quasi-automatic manner.[262] By itself, the Commission has realised a certain enforcement gap in the EU environmental law sphere,

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[254] (n 45) Art. 17 TEU para 1.
[255] *Ibid* para 7.
[256] (n 228) p 6.
[257] (n 30) Art. 259 AEUV para 7.
[258] Case C-531/06 Commission v Italian Republic [2009] ECLI:EU:C:2009:315 para 23.
[259] (n 228) *Ibid.*
[260] European Commission, 'Communication on public procurement in the EU' COM (1998) 143, p 13.
[261] Stine Andersen, '*The Commission´s General Powers of Enforcement*' in Stine Andersen, *The Enforcement of EU Law: The Role of the European Commission* (Oxford University Press 2012) 13-43(18), available at: https://academic.oup.com/book/43731/chapter/367974164?login=true (accessed 27 Sep 2024).
[262] European Environmental Bureau (EEB), '*Stepping up Enforcement – Recommendations for a Commission "Better Compliance" agenda to ensure the application of EU environmental law'* (2022), p 8, available at: https://www.birdlife.org//wp-content/uploads/2022/06/2022-06-15_EEB-BirdLife_Enforcement-Recommendations-EC_Better-Compliance-Agenda.pdf (accessed 27 Sep 2024).

but referred to its numerous soft law instruments such as the role of guidelines or guidance on inspections.[263]

Furthermore, it is worth to note that the Commission relies to a high degree of complaints from citizens, non-governmental organisations or the press as a means to reveal possible violations of EU law.[264] In 2023, the Commission received a total of 2.452 complaints, whereby it could not find any violation of EU law in 2.074 complaints.[265] Regarding the latter, a number of 147 complaints concerned EU biodiversity law issues. Further on, a total number of 110 complains were resolved within pre-infringement dialogue, known as the EU Pilot system, which was established in 2008. The Commission makes use of this informal procedure above all in cases where it is likely to prompt faster compliance than initiating a formal infringement procedure; in particular, if the complaint at stake is of technical nature. The Pilot procedure is not applied if the infringement is well documented, obvious or if it would lead to unnecessary delays; instead, infringement proceedings are usually initiated immediately.[266] In fact, among the EU Pilot cases in 2023, only two complaints concerned environmental law issues and consequently, potential biodiversity law violations. It seems that alleged violations of obligations arising from the Nature Directives or other related EU legislation are not appropriate to resolve within the Pilot dialogue since it could lead to undesirable delays. Rather, the preparatory stage regarding biodiversity cases was caused by Commission´s own-initiative.[267] This assumption is confirmed by statistics from 2023. In that year, 529 infringement proceedings were formally initiated by the Commission by sending a letter of formal notice to the concerned Member State under Art. 258 TFEU. Among these new infringement cases a total number of 109, so 20,6% refer to the environmental law sector. These 109 environmental infringement procedures are divided equally into cases related to non-communication of transposition measures and non-conformity/incorrect application.[268] Obviously, the cases which include the incorrect transposition of directives are those which are opened following Commission´s own investigations.[269] Since EU biodiversity law is mostly enshrined in the two EU nature directives, it can be assumed that infringement procedures make up a large amount in this respect. Remarkably, the number of 529 new infringement proceedings in 2023 is the lowest in two decades.[270] By comparison, in 2020, the Commission initiated 903 infringement proceedings, of which a number of 236 were attributed to the environment laws sector.[271] Instead, the new Commission is promoting a '*smart enforcement'* approach, for which the infringement procedure is just one of several tools to

[263] European Commission, 'EU actions to improve environmental compliance and governance' COM (2018) 010 final.

[264] Stine Andersen, '*Failure to Comply with EU Law: Article 258 TFEU'* in Stine Andersen, *The Enforcement of EU Law: The Role of the European Commission* (Oxford University Press 2012) 44-95(64), available at: https://academic.oup.com/book/43731/chapter/367974416?login=true (accessed 27 Sep 2024).

[265] European Commission, '*2023 Annual Report on monitoring the application of EU law'* (2024), available at: https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2023-annual-report-monitoring-application-eu-law_en (accessed 27 Sep 2024).

[266] European Commission, 'Enforcing EU law for a Europe that delivers' COM (2022) 518 final p 7.

[267] (n 265) *Ibid.*

[268] (n 266) *Ibid.*

[269] (n 264) 24.

[270] Politico, '*Ursula von der Leyen has taken green enforcement behind closed doors'* (2024) available at: https://www.politico.eu/article/ursula-von-der-leyen-green-enforcement-environmental-law-policy-lack-transparency/ (accessed 28 Sep 2024).

[271] European Commission, '*2020 Annual Report - Monitoring the Application of European Law'* (2021), p 2 available at: https://commission.europa.eu/document/download/587fdade-f1d2-446c-8903-933a2a3be7d9_en?filename=factsheet-eulaw-overview-ar-2020_en.pdf (accessed 28 Sep 2024).

enforce EU environmental law. Insofar, it has been announced to increasingly support Member States in implementing environmental laws within informal dialogues.[272]

Heading now to the pre-infringement phase in Art. 258 TFEU, it must be said that this is a formal dialogue between the Commission and the Member State, which is mandatory in order to start the litigation phase before the Court of Justice.[273] It is initiated by Commission´s letter of formal notice to the Member State concerned. The purpose of this procedural step is, on the one hand, to delimit the subject-matter of the dispute and, on the other hand, to invite the Member State submitting its observations on the issue.[274] Neither the letters of formal notice nor other decisions on the pre-litigation infringement procedure are published by the Commission, which is criticised because the lack of transparency makes it more difficult for civil society to fulfil its role as watchdog and to support the Commission as the guardian of the Treaties.[275] However, it should be noted that at this pre-litigation stage, the issue at stake is merely an allegation. Therefore, a discrete and bilateral dialogue between the Commission and the Member State should be enabled in order to find amicable solutions.[276] Additionally, monthly press releases on infringement packages are published which provide brief information on the current status of the procedures.

Taking into account the period from 2023 onwards until today, the Commission has launched numerous procedures related to allegations of biodiversity infringements. For instance, in January 2023 the Commission sent a letter of formal notice to Estonia for setting specific conservation objectives and measures for habitats and species present in a Special Area of Conservation (SAC) to maintain or restore them to favourable conservation status.[277] Moving forward to July 2023, the Commission calls on Austria to correctly transpose the Habitats Directive in the Salzburg National Park Law since numerous types of projects are not subject to any assessment according to the Austrian law.[278] A letter of formal notice was also sent to Portugal, in November 2023, alleging that Portugal has not taken the necessary measures to avoid significant disturbance of bottlenose dolphins and harbour porpoises by incidental catches of cetaceans by fishing vessels.[279] Finally, in March 2024, the Commission sent a letter of formal notice to Germany with the allegation for failing to sufficiently implement measures required to conserve wild birds under the Wild Birds Directive, more precisely for not designating the most suitable territories as Special Protection Areas (SPAs) for five bird species.[280]

Once starting a formal pre-litigation, only a small percentage reaches the Court of Justice. In 2023, only 82 infringement cases were submitted to the Court of Justice, with 77 cases falling under Art. 258 TFEU and 5 cases under Art. 260(2) TFEU.

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[272] *Ibid.*
[273] (n 267) 46.
[274] (n 19) Art. 258 TFEU para 17.
[275] (n 265) 10.
[276] (n 267) 69.
[277] European Commission, INFR (2022) 2002, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142 (accessed 28 Sep 2024).
[278] European Commission, INFR (2023) 2045, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_3445 (accessed 28 Sep 2024).
[279] European Commission, INFR (2020) 4038, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_5380 (accessed 28 Sep 2024).
[280] European Commission, INFR (2023) 2179, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_24_663 (accessed 28 Sep 2024).

One example from January 2023 refers to the Commission´s decision to bring six Member States (Bulgaria, Greece, Ireland, Italy, Latvia and Portugal) before the Court of Justice for failing to implement and communicate various provisions of the Invasive Alien Species Regulation 1143/2014, more precisely for not implementing an action plan which tackles the most important pathways of introduction and spread of invasive alien species.[281] In December 2023 another Commission´s referral to the Court of Justice also concerned the Invasive Alien Species Regulation. In this context, Ireland is alleged to have failed adopting and notifying penalties applicable to breaches of this Regulation.[282] Recently, in March 2024, the Commission sued Cyprus before the Court of Justice for allegedly not having established the necessary conservation measures for 28 Special Areas of Conservation and not properly protecting 5 Natura 2000 sites with adequate conservation objectives under the Habitats Directive.[283]
This exemplary extract shows by its own that the Commission takes violations of the EU Nature and biodiversity law seriously in all procedural steps. Their enforcement efforts concern the most diverse detailed issues of the relevant legislation and are directed against various Member States. In conclusion, the private enforcement efforts - driven by the preliminary reference procedure - were aimed at a uniform interpretation of EU nature conservation law across all Member States, whereas the public enforcement system tends to be more of a compliance tool, reminding Member States of their obligations - be it incorrect transposition or application. Both strands ultimately go hand in hand and are necessary in order to take the EU nature goals seriously at all.

b) Aspects in infringement judgments regarding biodiversity protection cases

Given the fact that only a few infringement proceedings initiated by the Commission ultimately result in a judgement by the Court of Justice – insofar 17 in 2022 and 18 in 2023[284] - it is even more important to take a closer look at the judgements of the last years that have been issued in relation to EU biodiversity protection law. In the infringement judgement by the Court of Justice *Commission v Republic of Poland*[285] from 2018, it is unprecedently demonstrated that a dispute over biodiversity protection can also take other dimensions. It shows that the protection of European ecosystems is also dependent on the Member States' compliance with the fundamental principles of the EU - above all the rule of law and general duty of sincere cooperation. After the Polish government was formed in 2015, a serious rule of law crisis was caused, primarily due to a radical judicial reform.[286] This eventually led to a rule of law crisis within the EU, which not only had serious consequences for the enforcement of individuals' fundamental

[281] European Commission, '*Biodiversity: Commission to refer six Member States to the Court of Justice for failing to prevent invasive alien species damaging European nature'* (2023) press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_167 (accessed 28 Sep 2024).
[282] European Commission, '*Nature: Commission refers Ireland to the Court of Justice for failing to adopt and notify penalties on invasive alien species'* (2023) press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6344 (accessed 28 Sep 2024).
[283] European Commission, '*The Commission decides to refer Cyprus to the Court of Justice of the European Union for failure to take the necessary steps to protect and manage its Natura 2000 sites'* (2024) press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_24_1230 (accessed 28 Sep 2024).
[284] Court of Justice of the European Union, '*Annual Report 2023 – Statistics concerning the judicial activity of the Court of Justice'* (2024) p 20, available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/en_ra_2023_cour_stats_web_bat_22042024.pdf (accessed 28 Sep 2024).
[285] Case C-441/17 Commission v Republic of Poland [2018] ECLI:EU:C:2018:255.
[286] Chatham House, '*The EU must face up its rule of law crisis'* (2023), available at: https://www.chathamhouse.org/2023/05/eu-must-face-its-rule-law-crisis (accessed 29 Sep 2024).

rights but also for the only remaining primeval forest in the EU which is included in the World Heritage List of the UNESCO.[287]

In essence, the case was about Commission´s enforcement efforts in order to preserve a Natura 2000 site called the Białowieża Forest, an old forest area in eastern Poland, which is known for its high conservation value.[288] Despite warnings from scientists across Europe, in March 2016 the Polish Minister for the Environment, at the request of the Director General of the State Forestry Office, decided to triple the level of logging in the Białowieża Forest District for the period up to 2021.[289] This decision was reasoned by the result of the constant spread of the bark beetle, so that the increase logging would be necessary in order to maintain the forest in an appropriate state of health. The Polish authorities also referred to an environmental impact assessment carried out in 2015 from which it followed that those measures did not have a significant negative impact on the integrity of the Białowieża forest.[290] However, environmental groups viewed this scientifically unfounded measure as merely an excuse for the Polish government to expand the timber trade.[291] Following an unsuccessful pre-litigation procedure, in July 2017, the Commission brought an action for failure to fulfil obligations under Art. 258 TFEU before the Court of Justice regarding the controversial plans for the Białowieża Forest. It concerned the allegation that Poland has failed to fulfill its obligations arising from Art. 6(1) and (3) and Art. 12(1)(a),(d) of the Habitats Directive, as well as Article 4(1),(2) and Art. 5(b), (d) of the Wild Birds Directive. Afterwards, another judicial tool for the Commission for an effective law enforcement became relevant. It is the possibility to obtain necessary interim measures in any cases before the Court of Justice according to Art. 279 TFEU. Such interim relief guarantees the full effectiveness of a future decision since actions before the Court of Justice lacks suspensory effect.[292] As follows from Art. 160(3) of the Rules of Procedure of the Court of Justice,[293] applications for interim relief must include the subject matter of the proceedings and circumstances giving rise to urgency. In this regard, the Commission argued in its application for interim measures that Poland´s active forest management operations are likely to cause irreparable damage to the forest and it would be impossible to restore the areas affected by such operations.[294] The Grand Chamber of the Court granted that request for interim measures and as such, ordered that Poland shall cease immediately and until delivery of the final judgment the logging measures, whereby it provides for the imposition of a periodic penalty payment of at least 100.000 EUR per day if there is found to be an infringement.[295] Despite this order, Poland continued and even intensified to log huge parts of the Białowieża Forest, which are now gone forever.[296] A Member State´s refusal to follow the decision of the Court means a failure in the duty of solidarity in Art. 4(3) TEU which was accepted by the Member

[287] Client Earth, '*Saving Białowieża'* (2021) available at: https://www.clientearth.org/latest/news/saving-bialowieza/ (accessed 29 Sep 2024).
[288] European Forest Institute, '*What we can learn from the conflict over the Białowieża Forest'* (2019) available at: https://efi.int/news/what-we-can-learn-conflict-over-bialowieza-forest-2019-05-15 (accessed 29 Sep 2024).
[289] (n 285) para 28.
[290] *Ibid* para 29-31.
[291] (n 287) *Ibid.*
[292] (n 19) Art. 279 TFEU para 1.
[293] Rules of Procedure of the Court of Justice [2012] OJ L265/1.
[294] Case C-441/17 R Commission v Republic of Poland [2017] ECLI:EU:C:2017:877 para 45-46.
[295] *Ibid* para 118-119.
[296] Tomasz Koncewicz, '*The Białowieża case. A Tragedy in Six Acts'* (2018) Verfassungsblog, available at: https://verfassungsblog.de/the-bialowieza-case-a-tragedy-in-six-acts/ (accessed 29 Sep 2024).

State by the fact of its adherence to the EU. This shortcoming strikes at the fundamental basis of the EU legal order.[297] However, it can be noted that the Court of Justice has completely fulfilled its mandate in Art. 19(1) TEU to ensure that in the interpretation and application of the Treaty is observed by its order. On the other hand, it is surprising is that the Commission then failed to specify the penalty payment according to Art. 260(2) TEU - probably for political reasons, in order to avoid further escalation of the rule of law crisis.[298]

In its judgment of 17 April 2018, the Court of Justice ruled that Poland has indeed failed to fulfil its obligations under the EU Nature Directives by carrying out logging activities on the Białowieża Forest. Insofar, the Court stated that Poland has violated its obligation to carry out an appropriate assessment according to Art. 6(3) Habitats Directive because the active forest management operations at issue are likely to have a significantly effect on the site. and cause lasting harm to the ecological characteristics of that site.[299] In this vein, the Court emphasised that the Polish decision to increase the level of logging is scientifically not proven as an appropriate measure to stop the spread of the bark beetle.[300] In May 2018, the Polish minister for environment announced that one of the two illegally logging permits would be revoked.

In conclusion, it is well to note that ultimately, the Court of Justice provides the procedural infrastructure to ensure an effective application and enforcement of EU law according to Art. 19(1) TEU, but not act on its own. As the 'guardian of the Treaties,' the Commission plays the key role in taking steps to enforce EU law as they have the unique power to launch infringement procedures. To prevent irreparable ecological damage to EU's ecosystems, which are essential for biodiversity, infringement procedures must be carried out by the Commission by all means – including those provided under Art. 279, 260 TFEU. Thus, even in times of a rule of law crisis, EU nature conservation laws should be rigorously enforced in order to prevent losses like those in the Białowieża Forest.

Chapter B: Procedural Pathways for Private Enforcement of EU Biodiversity Legislation

1. Access to information in the context of biodiversity protection

As can be derived from the *Van Gend en Loos* judgement, the effective application and enforcement of EU law is not only monitored by the Commission, but also by the '*vigilance of individuals*.'[301] With references to biodiversity protection, as shown above, it should be noted that individuals can indeed play a role, such as by submitting complaints to the Commission, which can lead to infringement proceedings or at least to other investigation measures. As such, local inhabitants are able to observe negative changes of ecosystems in their closest neighbourhood. On the other hand, as we have seen, when implementing restoration measures in the national restoration plans, it is necessary to foster a continuous dialogue with the general public and all stakeholders and enable a participatory framework.[302]

Since the early days of the environmental movement in the 1970s, a so-called '*concept of environmental democracy*' has developed, which enables citizens to engage in governmental

[297] Case C-39/72 Commission v Italian Republic [1973] ECLI:EU:C:1973:13 para 25.
[298] (n 296) *Ibid.*
[299] (n 294) para 158, 164.
[300] *Ibid* para 179.
[301] (n 225).
[302] (n 13) para 83.

environmental decision-making.[303] Legally, three procedural rights have emerged as instruments allowing active participation in environmental democracy: the rights of access to information, public participation, and access to justice. In 1998, these three rights were codified at the public international level in the *Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters* (the Aarhus Convention),[304] which has since been ratified by 47 States, including all EU Member States and the EU.[305]

First of all, citizens need access to the necessary environmental information in order to be able to substantially claim that their own rights are violated.[306] In this regard, Art. 4(1) of the Aarhus Convention provides in detail that each party shall ensure that their authorities make environmental information available to the public upon request. Since this right to access to environmental information should be implemented within the national legislation, the EU adopted the Environmental Information Directive 2003/4/EC[307] to ensure that environmental information is progressively made available at Member State level. The relevant Art. 3 of Directive 2004/4/EC is far-reaching and even goes beyond the requirements of Art. 4 of the Aarhus Convention, while the exceptions to access are essentially the same as in the Aarhus Convention.[308] For instance, an applicant is defined in Art. 2(5) as '*any natural or legal person requesting environmental information.'*

Regarding environmental information held by EU institutions, insofar especially the collected monitoring data on species populations, habitats and trends in Natura 2000 sites – Art. 4 of the Aarhus Regulation (EC) 1367/2006[309] provides the obligation for Community institutions and bodies to make environmental information progressively available in electronic databases. According to Art. 2 of the Aarhus Regulation, this Regulation is also applicable to the Access Document Regulation (EC) 1049/2001,[310] which provides the right of access to documents in general generated by the European Parliament, the Council and the Commission.

2. Access to justice in context of biodiversity protection

Access to information and public participation in environmental decision-making procedures alone are merely the foundation to ensure that nature conservation and biodiversity law is enforced. Access to justice is required in order to be able to challenge decisions such as the Polish logging forest management plan for the Białowieża Forest. However, the Polish national legal

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[303] Marjan Peeters, '*Judicial Enforcement of Environmental Democracy: a Critical Analysis of Case Law on Access to Environmental Information in the European Union'* (2020) Chinese Journal of Environmental Law 4, 13-43(14), available at: https://brill.com/view/journals/cjel/4/1/article-p13_2.xml (accessed 29 Sep 2024).

[304] Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

[305] Valentina Rossi and others, '*Poor online information on European marine protected areas impairs public participation under the Aarhus Convention'* (2024) Marine Policy 161, p 2, available at: https://www.sciencedirect.com/science/article/pii/S0308597X24000101 (accessed 29 Sep 2024).

[306] (n 303) *Ibid.*

[307] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC OJ L41/26.

[308] Uzuazo Etemire, '*Access to Environmental Information under EU Law*' in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 117-132(122).

[309] Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13.

[310] Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43.

order does not provide for a possibility of challenging such decisions, which is mainly due to the lack of legal standing for individuals or non-governmental organisations (NGOs).[311]
Against the background that Art. 9 of the Aarhus Convention sets out a separate pillar for access to justice, which must be incorporated into national law by the parties, it is surprising that both at EU level and at Member State level there are in part very different and inadequate legal standards for access to justice under environmental law. When examining the provision of Art. 9 of the Aarhus Convention, three access to justice pathways are established. Firstly, Art. 9(1) grants access to justice with regard to refused information requests submitted under Art. 4. This is implemented at EU level in Art. 6 of the Environmental Information Directive 2003/4/EC. Secondly, Article 9(2) provides for access to review procedures in relation to decisions, acts or omissions related to the public participation requirements under Art 6. The EU has also implemented this part, namely in Art. 15a of Directive 2003/35/EC.[312] Thirdly, Art. 9(3) establishes a more general obligation of access to justice, regarding the review of all other acts and omissions related to environment. When comparing Art. 9(2) and Art. 9(3), it is notable that both provisions have different legal standing criteria. Art. 9(2) refers to '*members of the public concerned'*, whereby either a sufficient interest must exist or maintaining impairment of a right. In addition, it is determined that a sufficient interest of a non-governmental organisation is fulfilled with reference to Art. 2(5), which establishes the presumption of interest in favour of environmental non-governmental organisations. On the other hand, Art. 9(3) just refers to 'members of the public' with references to Art. 2(4). There a presumption of interest in favor of environmental NGOs is missing.
To date, Art. 9(3) has not been transposed on EU level mostly due to resistance of the Council in the legislative procedure. Insofar, back in 2014, the Council rejected[313] a Commission´s proposal for a directive on access to justice in environmental matters. [314] More recently, the Council also rejected[315] a provision on access to justice in the Proposal for a Regulation on Nature Restoration. The proposal intended in Art.16 that members of the public, having a sufficient interest or maintaining the impairment of a right, should have access to a review procedure to challenge the substantive or procedural legality of the national restoration plans.[316] In the adopted final version of the Nature Restoration Regulation (EU) 2024/1991, the commitment to access to justice in environmental matters has only been included in Recital 82,[317] which refers to the Member States' obligation under Article 19(1) TEU to provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law, as well as the obligations under

[311] European Environmental Bureau, '*Joint letter to the Swedish presidency on the importance of access to justice'* (2023) available at: https://eeb.org/library/joint-letter-to-the-swedish-presidency-on-the-importance-of-access-to-justice/ (accessed 30 Sep 2024).
[312] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [2003] OJ L156/17.
[313] Mariolina Eliantinio and Justine Richelle, '*Access to Justice in Environmental Matters in the EU Legal Order: The "Sectoral" Turn in Legislation and Its Pitfalls'* (2024) European Papers 9(1) 261-274(266), available at: https://www.europeanpapers.eu/en/europeanforum/access-justice-environmental-matters-eu-legal-order-sectoral-turn-legislation-pitfalls#_ftn24 (accessed 30 Sep 2024).
[314] Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters COM (2003)0624 final.
[315] (n 296) 270.
[316] (n 83) Art. 16.
[317] (n 13) Recital 82.

Art. 9 of the Aarhus Convention. Needless to say, this does not establish a right to access to justice by itself.
However, as stated in Article 216(2) TFEU, international agreements like the Aarhus Convention are binding on the EU and form an integral part of the EU legal order. Consequently, the Court of Justice is able to interpret the provisions of the Convention within the context of a preliminary reference procedure under Art. 267 TFEU.[318] In this regard, the *Brown Bear* case[319] has become well-known. It concerns a claim by a Slovak environmental organisation that demanded to be a *party* to the administrative proceedings relating to the grant of derogations to the system of protection for species such as the brown bear. Since Slovakian law did not provide for such standing, the organisation invoked Art. 9(3) of the Aarhus Convention directly. Due to the lack of a clear and precise obligation and the need to further adopt a subsequent act, the Court of Justice concluded that Art. 9(3) does not have direct effect in EU law. But national courts have the duty of consistent interpretation according to which they need to interpret to the fullest extent possible national standing rules in conformity with the objective of Art. 9(3) and for safeguarding rights which individuals derive from EU law, here the Habitats Directive.[320]

IV. Conclusion

To address the first research question referring to the legal interaction between biodiversity and the CAP, it is important to first summarise the legal operational conditions that arise from the new adopted EU Nature Restoration Regulation.

First of all, it is worth to note that nowadays the EU takes a leading role on the international stage regarding biodiversity protection, being the first one to adopt such a progressive piece of legislature. Then, it is promising that, in contrast to the Nature Directives, the Nature Restoration Regulation sets provisions with concrete, legally binding, and time-bound restoration targets. The Regulation's holistic approach seeks to create synergy effects among measures in various sectors and across all ecosystems in the EU. Consequently, the existing system of Natura 2000 areas is primarily tackled for actions up to 2030. Unfortunately, the law in its final form contains some compromises, such as the weakened non-deterioration obligation in Art. 4(12), whereby the shift towards a best-effort obligation is able to substantially diminish its effectiveness and enforceability.
In my opinion, the EU's target of planting 3 billion additional trees by 2030, laid down in Art. 13 is misplaced, as its wording is too vague regarding the Member State´s distribution. It would have been better suited in a separate regulation.
Further on, through the new implementation tools regarding both the national restoration plan and the CAP strategic plan, the burden of achieving the ambitious targets is primarily imposed on the Member States. The success of this governance approach will depend, on the one hand, on the collaborative procedure between Member States and the EU Commission in developing

[318] Audrey Danthinne and others, '*Justifying a presumed standing for environmental NGOs: A legal assessment of Article 9(3) of the Aarhus Convention'* (2022) Reciel 31(3) 411-420(413) available at: https://onlinelibrary.wiley.com/doi/10.1111/reel.12450 (accessed 30 Sep 2024).
[319] Case C-240/09 Lesoochranárske [2011] ECLI:EU:C:2011:125.
[320] *Ibid* para 45,50-51.

the national plans, and, on the other hand, on the robustness of the compliance provisions, including monitoring and reporting obligations, to ensure adherence to these plans.
Unfortunately, in that vein, it appears that the period for publishing the Report of the State of Nature in the EU - even after the adoption of the Nature Restoration Regulation - remains six years, which is quite a long period. It would have been preferable to take back the previous provision of the Wild Birds Directive, which required a report to be published every three years. This would allow for more regular engagement and information sharing with the public. Moreover, a period of ten years for a review of the national restoration plans appears to be too long in view of the speed of species extinction. However, it was essential to incorporated in the mandatory preparatory procedure outlined in Art. 14(20) of the Regulation, since this provision ensures the participation of the relevant stakeholders such as the farmers.
Agriculture for itself is the most influential EU policy area through which the main drivers for biodiversity loss are triggered. However, developments in other sectors such as industry, transport and the expansion of renewable energies must not be neglected in order to achieve a holistic approach to biodiversity protection and conservation. After analysing the recent reform for the CAP 2023-2027, it must be recognised from a legal perspective that the new measures have little impact on improving biodiversity on European farmland. Only agri-environment-climate measures seem to be effective, but those remain underfunded in comparison to the less effective new eco-schemes. Furthermore, there should be a separate Union fund for biodiversity in order to avoid the overlapping and conflicting objectives of the two-fund system of the CAP which are often influenced by competing priorities like productivity and market stability. Such a specialised fund would address the complexities and inefficiencies of the current funding landscape by streamlining and transparently allocating resources for halting biodiversity loss, restoring ecosystems, and achieving the EU's ambitious goals under the Biodiversity Strategy for 2030 and the Nature Restoration Regulation.

Regarding the second research question, which referred to the contribution of public and private enforcement of EU legislation for an effective achievement of the EU biodiversity protection objectives, it can be summed up that both mechanisms complement each other well. On the one hand, individuals are able to directly enforce transposed and implemented EU law before the national courts which inevitable have own interpretative nuances on EU law. In future, the preliminary reference procedure will shape the application and interpretation of the Nature Restoration Regulation and will clarify unclear provisions by the Court of Justice´s case-law. Additionally, individuals and non-governmental organisations have good rights to access to environmental information based the well implemented in Directive 2003/4/EC. However, regarding the access to justice, Art. 9(3) Aarhus Convention should be finally implemented on EU level.

Finally, the public enforcement by the Commission is shaped by new smart enforcement approaches with less infringement procedures but more soft law guidance. However, in some cases like in the *Białowieża Forest case,* the Commission should enforce EU Nature legislation by all means – especially with Art. 279, 260(2) TFEU in order to prevent irreparable ecological damages.

Bibliography

Cases

- European Court of Justice -

Case C-26/62 Van Gend en Loos v Netherlands Inland Revenue Administration [1963] ECLI:EU:C:1963:1

Case C-6/64 Flaminio Costa v E:N.E.L. [1964] ECLI:EU:C:1964:66

Case C-39/72 Commission v Italian Republic [1973] ECLI:EU:C:1973:13

Case C-148/78 Ratti [1979] ECLI:EU:C:1979:110

Case C-283/81 CILFIT v Ministry of Health [1982] ECLI:EU:C:1982:335

Case C-80/86 Kolpinghuis Nijmegen BV [1987] ECLI:EU:C:1987:431

Case C-322/88 Salvatore Grimaldi v Fonds des Maladies Professionnelles [1989] ECLI:EU:C:1989:646

Case C-336/00 Republik Österreich v Martin Huber [2002] ECR I – 7736

Case C-117/00 Commission v Ireland [2002] ECLI:EU:C:2002:366

Case C-127/02 Waddenzee vs Staatssecretaris van Landbouw [2002] ECLI:EU:C:2004:482

Case C-6/04 Commission v United Kingdom [2005] ECLI:EU:C:2005:626

Case C-209/04 Commission v Republic of Austria [2006] ECLI:EU:C:2006:195

Case C-508/04 Commission of the European Communities v Austria [2007] ECR I-3787

Case C-531/06 Commission v Italian Republic [2009] ECLI:EU:C:2009:315

Case C-173/09 Elchinov v Natsionalna zdravnoosiguritelna kasa [2010] ECLI:EU:C:2010:581

Case C-240/09 Lesoochranárske [2011] ECLI:EU:C:2011:125

Case C-2/10 Franchini sarl and Eolica di Altamura Srl v Regione Puglia [2011] ECLI:EU:C:2011:502

Case C-2/10 Franchini Sarl and Eolica di Altamura Srl v Regione Puglia [2011] ECLI:EU:C:2011:252 Opinion of AG Mazák

Opinion 1/09 [2011] ECLI:EU:C:2011:123

Case C-43/10 Nomarchiaki Aitoloakarnanias [2012] ECLI:EU:C:2012:560

Case C-258/11 Sweetman v An Bord Pleanála [2013] ECLI:EU:C:2013:220

Joined Cases C-387/15 and C-388/15 Hilde Orleans and Others v Vlaams Gewest [2016] ECLI:EU:C:2016:583

Case C-164/17 Grace and Sweetman v An Bord Pleanála [2018] ECLI:EU:C:2018:593

Case C-441/17 R Commission v Republic of Poland [2017] ECLI:EU:C:2017:877

Case C-441/17 Commission v Republic of Poland [2018] ECLI:EU:C:2018:255

- National Courts –

BVerwG 9 A 22.11, judgement of 28.03.2013, available at: https://www.bverwg.de/280313U9A22.11.0 (accessed 25 Sep 2024)

BVerwG, 4 C 3.12 - Judgment of 10 April 2013, available at: https://www.bverwg.de/100413U4C3.12.0 (accessed 25 Sep 2024)

Legislation

- Directives -

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [1979] OJ L103/1

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [2003] OJ L156/17

Directive 2009/128/EC 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides [2009] OJ L309/71

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2009] OJ L20/7

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L197/30

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26

- Regulations –

Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43

Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13

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 [2014] OJ L317/35

Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and

2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC [2019] OJ L170/115

Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE), and repealing Regulation (EU) No 1293/2013 [2021] OJ L172/53

Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 [2021] OJ L435/187

Regulation (EU) 2021/2115 of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 [2021] OJ L435/1

Regulation (EU) 2024/1991 of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 [2024] OJ L178/1

- Decisions -

Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity [1993] OJ L309/1

Decision (EU) 2022/591 of 6 April 2022 on a General Union Environment Action Programme to 2030, OJ. EU L114/22

Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 [2022] OJ L114/22

- Others –

Rules of Procedure of the Court of Justice [2012] OJ L265/1

International Treaties

Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243, as implemented by Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora [2015] OJ L75/1

Convention on the Conservation of Migratory Species of Wild Animals (adopted 23 June 1979, entered into force 1 November 1983) 1651 UNTS 333, as implemented by Council Decision 82/461/EEC of 24 June 1982 concerning the conclusion of the Convention on the Conservation of Migratory Species of Wild Animals [1982] OJ L210/10

Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, as implemented by Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity [1993] OJ L309/1

Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447

Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) Report No. FCCC/CP/2015/L.9/Rev.1

Treaty on European Union [2008] OJ C115/13

Treaty on the Functioning of the European Union [2008] OJ C115/47

Non-binding Documents

- Proposals –

Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters COM (2003)0624 final

Proposal for a Regulation on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115, COM (2022) 305 final

Proposal for a Regulation of the European Parliament and of the Council on Nature Restoration COM (2022) 304 final

Proposal for a Regulation of the European Parliament and of the Council on a Monitoring Framework for Resilient European Forests' COM (2023) 728 final

- Strategies –

European Commission, 'Communication on public procurement in the EU' COM (1998) 143
European Commission, 'Halting the loss of biodiversity by 2010 - and beyond - Sustaining ecosystem services for human well-being' COM (2006) 0216 final

European Commission, 'Our Life Insurance, Our Natural Capital: An EU Biodiversity Strategy to 2020' COM (2011) 0244 final

United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (adopted 21 October 2015) UN Doc A/RES/70/1

European Commission, 'EU actions to improve environmental compliance and governance' COM (2018) 010 final

Conference of the Parties to the Convention on Biological Diversity, 'Strategic Plan for Biodiversity 2011-2020' (adopted 29 October 2010) UN Doc UNEP/CBD/COP/DEC/X/2

European Commission, 'The European Green Deal' COM/2019/640 final

European Commission, 'EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives' COM (2020) 380 final
European Commission, 'A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System' COM (2020) 381 final

European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an Action Plan for the Development of Organic Production' COM (2021) 141 final/2

European Commission, 'New EU Forest Strategy for 2030' COM (2021) 572 final

European Commission, 'Evaluation of the EU Biodiversity Strategy to 2020' SWD (2022) 284 final

Kunming-Montreal Global Biodiversity Framework (adopted 19 December 2022) CBD/COP/DEC/15/4

European Parliament, '*The Common Agricultural Policy Strategic Plans Regulation'* (2023) Fact Sheets on the European Union, available at: https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_3.2.4.pdf (accessed 20 Aug 2024)

- Infringement Decisions –

European Commission, '*Biodiversity: Commission to refer six Member States to the Court of Justice for failing to prevent invasive alien species damaging European nature'* (2023) press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_167 (accessed 28 Sep 2024)

European Commission, '*The Commission decides to refer Cyprus to the Court of Justice of the European Union for failure to take the necessary steps to protect and manage its Natura 2000 sites'* (2024) press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_24_1230 (accessed 28 Sep 2024)

European Commission, INFR (2022) 2002, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142 (accessed 28 Sep 2024)

European Commission, INFR (2023) 2045, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_3445 (accessed 28 Sep 2024)

European Commission, INFR (2020) 4038, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_5380 (accessed 28 Sep 2024)

European Commission, INFR (2023) 2179, press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_24_663 (accessed 28 Sep 2024)

Books

Azoulai, L (ed), *The Question of Competence in the European Union* (Oxford University Press 2014)

Calliess, C and Ruffert M (eds), *EUV/AEUV: Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta* (CH Beck, 6th ed 2022)

Grabitz E, Hilf M and Nettesheim M (eds), *Das Recht der Europäischen Union – Band 1: EUV/AEUV* (CH Beck, 82th ed 2024)

Kellerbauer, M, Klamert, M and Tomkin J (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford Academic 2019), available at: https://academic.oup.com/book/41771/chapter/354433206 (accessed 12 Aug 2024)

Langlet, D and Mahmoudi, S, *EU Environmental Law and Policy* (Oxford University Press, online ed 2016)

Von Landmann, R and Rohmer, G (eds), *Umweltrecht Kommentar* (C.H. Beck, 7th ed 2024),

Van Calster, G and Reins, L, *EU Environmental Law* (Edward Elgar Publishing, 1th ed 2017)

Wilman, F *Private Enforcement of EU Law Before National Courts* (Edward Elgar Publishing 2015), available at: https://china.elgaronline.com/monobook/9781784718480.xml (accessed 25 Sep 2024)

Journals

Adam, M and others, '*Call for integrating future patterns of 'biodiversity into European conservation policy'* (2022) Conservation Letters 15(5), available at: https://conbio.onlinelibrary.wiley.com/doi/10.1111/conl.12911 (accessed 20 Sep 2024)

Affolter, S '*The Subsidiarity Principle in EU Environmental Law'* (2021) in Günter Walzenbach and Ralf Alleweldt 'Varieties of European Subsidiarity: A Multidisciplinary Approach' (E-International Relations, 2021) 79-90, available at: https://www.e-ir.info/2021/03/26/the-subsidiarity-principle-in-eu-environmental-law/ (accessed 3 Sep 2024)

Almeida, D and others, '*The "Greening" of Empire: The European Green Deal as the EU first agenda'* (2023) Political Geography, Vol 105, 102925, available at: https://www.sciencedirect.com/science/article/pii/S0962629823001038 (accessed 21 Aug 2024)

Amos, R '*Assessing the Impact of the Habitats Directive: A Case Study of Europe´s Plants*' (2021) Journal of Environmental Law Vol 33(2), 365-393, available at: https://academic.oup.com/jel/article/33/2/365/6278041?login=true (accessed 13 Sep 2024)

Andersen, S '*The Commission´s General Powers of Enforcement*' in Stine Andersen, *The Enforcement of EU Law: The Role of the European Commission* (Oxford University Press 2012) 13-43, available at: https://academic.oup.com/book/43731/chapter/367974164?login=true (accessed 27 Sep 2024)

Andersen, S '*Failure to Comply with EU Law: Article 258 TFEU'* in Stine Andersen, *The Enforcement of EU Law: The Role of the European Commission* (Oxford University Press 2012) 44-95, available at: https://academic.oup.com/book/43731/chapter/367974416?login=true (accessed 27 Sep 2024)

Baquero, R and others, '*Tackling biological invasions in Natura 2000 networks in the light of the new EU Biodiversity Strategy for 2030'* (2021) Management of Biological Invasions Vol 12(4) 776–791, available at: https://www.reabic.net/journals/mbi/2021/4/MBI_2021_Baquero_etal.pdf (accessed 11 Sep 2024)

Bastmeijer, K '*Natura 2000 and the Protection of Wilderness in Europe'* in Kees Bastmeijer (ed), *Wilderness Protection in Europe. The Role of International, European and National Law*

(Cambridge University Press 2016) 177-198, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3279448 (accessed 14 Sep 2024)

Batáry, P and others, '*The role of agri-environment schemes in conservation and environmental management'* (2015) Conservation Biology, 29(4) 1006-1016, available at: https://conbio.onlinelibrary.wiley.com/doi/10.1111/cobi.12536 (accessed 23 Sep 2024)

Bodenbender, L *´Die EU-Verordnung über die Wiederherstellung der Natur – Ein Überblick´* (2024) NuR 46, 525-533(526), available at: https://link.springer.com/article/10.1007/s10357-024-4424-x (accessed 10 Sep 2024)

Borghi, P '*Food Security and the Role of the EU'* (2023) DPCE Online Vol 59(2), available at: https://www.dpceonline.it/index.php/dpceonline/article/view/1963/1974 (accessed 20 Aug 2024)

Bouwma, I and others, '*Policy instruments and modes of governance in environmental policies of the European Union: past, present and future'* (2015) WOt-technical report 60, available at: https://edepot.wur.nl/373629 (accessed 17 Sep 2024)

Broberg, M '*Preliminary Reference as a Means for Enforcing EU Law' in* András Jakab, and Dimitry Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States* (Oxford Academics 2017) 99-111, available at: https://academic.oup.com/book/26766/chapter/195668226?login=true (accessed 26 Sep 2024)

Client Earth, '*Saving Białowieża'* (2021) available at: https://www.clientearth.org/latest/news/saving-bialowieza/ (accessed 29 Sep 2024)

Cliquet, A and others, '*Adaptation to climate change – legal challenges for protected areas'* (2009) Utrecht Law Review Vol 5(1) 158-175, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1440152 (accessed 13 Sep 2024)

Coman-Kund, F and Andone, C *'European Commission's Soft Law Instruments: In Between Legally Binding and Non-binding Norms'* (2019) in Patricia Popelier (ed), *Lawmaking in Multilevel Settings* (Nomos 1ed 2019) 173-197
available at: https://pure.uva.nl/ws/files/60889975/European_Commission_s_soft_law_instruments.pdf (accessed 10 Sep 2024)

Cortina-Segarra, J and others, '*Barriers to ecological restoration in Europe: expert perspectives'* (2021) Restoration Ecology 29(4) p 1, available at: https://www.researchgate.net/publication/348511911_Barriers_to_ecological_restoration_in_Europe_expert_perspectives (accessed 19 Sep 2024)

Danthinne, A and others, '*Justifying a presumed standing for environmental NGOs: A legal assessment of Article 9(3) of the Aarhus Convention'* (2022) Reciel 31(3) 411-420, available at: https://onlinelibrary.wiley.com/doi/10.1111/reel.12450 (accessed 30 Sep 2024)

de Leeuw, B and Backes, C '*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?*' (2024) Journal for European Environmental and Planning Law, Vol 21(1) 22-40, available at: https://dspace.library.uu.nl/bitstream/handle/1874/452867/jeep-article-p22_004.pdf?sequence=1&isAllowed=y (accessed 16 Sep 2024)

Dudley, N and Alexander, S '*Agriculture and biodiversity: a review'* (2017) Biodiversity 18(2) 45-49, available at: https://www.tandfonline.com/doi/full/10.1080/14888386.2017.1351892#abstract (accessed 20 Sep 2024)

Ekardt, F and others, '*Legally binding and ambitious biodiversity protection under the CBD, the global biodiversity framework, and human rights law'* (2023) Environmental Science Europe 35, available at: https://enveurope.springeropen.com/articles/10.1186/s12302-023-00786-5#citeas (accessed 4 Sep 2024)

Eliantinio, M and Richelle, J '*Access to Justice in Environmental Matters in the EU Legal Order: The "Sectoral" Turn in Legislation and Its Pitfalls'* (2024) European Papers 9(1) 261-274, available at: https://www.europeanpapers.eu/en/europeanforum/access-justice-environmental-matters-eu-legal-order-sectoral-turn-legislation-pitfalls#_ftn24 (accessed 30 Sep 2024)

Etemire, U '*Access to Environmental Information under EU Law*' in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 117-132

Frei, T and others, '*Can natural forest expansion contribute to Europe's restoration policy agenda? An interdisciplinary assessment'* (2023) Ambio 53, 34-45, available at: https://link.springer.com/article/10.1007/s13280-023-01924-2#citeas (accessed 17 Sep 2024)

Ellwanger, G and others, 'Current status of habitat monitoring in the European Union according to Article 17 of the Habitats Directive, with an emphasis on habitat structure and functions and on Germany' (2018) Nature Conservation 29, 57-78, available at: https://natureconservation.pensoft.net/articles.php?id=27273 (accessed 18 Sep 2024)

Emmerson, M and others, '*How Agricultural Intensification affects Biodiversity and Ecosystem Services'* (2016) Advances in Ecological Research, Vol 55, 43-97 (52), available at: https://www.sciencedirect.com/science/article/abs/pii/S0065250416300204?via%3Dihub (accessed 19 Aug 2024)

Guyomard, H and others, '*How the Green Architecture of the 2023-2027 Common Agricultural Policy could have been greener'* (2023) AMBIO A Journal of the Human Environment, Vol 52, 1327–1338, available at: https://link.springer.com/article/10.1007/s13280-023-01861-0 (accessed 22 Aug 2024)

Heyl, K and others, '*The Common Agricultural Policy beyond 2020: A critical review in light of global environmental goals'* (2020) 30(1) 95-106(96), available at: https://onlinelibrary.wiley.com/doi/10.1111/reel.12351 (accessed 22 Sep 2024)

Hoek, N '*The Habitats Directive and Heath: The Strain of Climate Change and N Deposition'* (2022) European Energy and Environmental Law Review Vol 31(1) 41-53, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476300 (accessed 14 Sep 2024)

Hoek, N '*A critical analysis of the proposed EU Regulation on Nature Restoration: Have the problems been resolved?'* (2022) European Energy and Environmental Law Review Vol 31(5) 320-333, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476293 (accessed 14 Sep 2024)

Hoevenaars, J '*Lawyering Eurolaw: An Empirical Exploration into the practice of preliminary references'* (2020) European Papers 5(2) 777-797, available at: https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2020_2_6_Articles_SS1_3_Jos_Hoevenaars_00412.pdf (accessed 26 Sep 2024)

Kenig-Witkowska, M '*The EU Biodiversity Strategy for 2030: Building Nature Resilience in the Wake of the post pandemic Covid-19 Socio-economic Recovery*' (2022), Studia Iuridica 91 available under: https://studiaiuridica.pl/article/160879/en (accessed 11 Aug 2024)

Lécuyer, L and others, '*Conflicts between agriculture and biodiversity conservation in Europe: Looking to the future by learning from the past'* (2021) Advances in Ecological Research 65, 3-56, available at: https://www.sciencedirect.com/science/article/pii/S0065250421000209?via%3Dihub (accessed 19 Sep 2024)

Lee, H and others, '*Three billion new trees in the EU's biodiversity strategy: low ambition, but better environmental outcomes?'* (2023) Environmental Research Letters 18(3), available at: https://iopscience.iop.org/article/10.1088/1748-9326/acb95c/pdf (accessed 17 Sep 2024)

Möckel, S 'The terms 'project' and 'plan' in the Natura 2000 appropriate assessment' (2017) Nature Conservation 23, 31-56 available at: https://natureconservation.pensoft.net/article/13601/ (accessed 25 Sep 2024)

Mont'Alverne, T and Lima, M '*The European Union as a Norm Shaper on Biodiversity Protection'* (2023) Veredas do Direito 20, 1-18, available at: https://revista.domhelder.edu.br/index.php/veredas/article/view/2569/25590 (accessed 4 Sep 2024)

Paleari, S '*The impact of the European Green Deal on EU Environmental Policy'* (2022) The Journal of Environmental & Development, Vol 31(2) 196-2020, available at: https://journals.sagepub.com/doi/epub/10.1177/10704965221082222 (accessed 21 Aug 2024)

Pe'er, G and others, '*Supplementary Materials for a greener path for the EU Common Agricultural Policy'* (2019) Science 365(6452) 449, available at: https://www.science.org/doi/10.1126/science.aax3146 (accessed 23 Sep 2024)

Pe'er, G and others, '*How can the European Common Agricultural Policy help halt biodiversity loss? Recommendations by over 300 experts'* (2022) Conservation Letters, Vol 15(6), p. 2, available at: https://pti-agriambio.csic.es/wp-content/uploads/2023/12/Conservation-Letters-2022-Pe-er-How-can-the-European-Common-Agricultural-Policy-help-halt-biodiversity-loss-.pdf (accessed 21 Aug 2022)

Peeters, M '*Judicial Enforcement of Environmental Democracy: a Critical Analysis of Case Law on Access to Environmental Information in the European Union'* (2020) Chinese Journal of Environmental Law 4, 13-43, available at: https://brill.com/view/journals/cjel/4/1/article-p13_2.xml (accessed 29 Sep 2024)

Obura, D '*The Kunming-Montreal Global Biodiversity Framework: Business as usual or a turning point?'* (2023) One Earth 6 (2) 77-80, available at: https://www.sciencedirect.com/science/article/pii/S2590332223000416 (accessed 4 Sep 2024)

Rossi, V and others, '*Poor online information on European marine protected areas impairs public participation under the Aarhus Convention'* (2024) Marine Policy 161, available at:

https://www.sciencedirect.com/science/article/pii/S0308597X24000101 (accessed 29 Sep 2024)

Slepcevic, R '*The judicial enforcement of EU law through national courts: possibilities and limits'* (2009) Journal of European Public Policy 16(3) 378-394, available at: https://www.tandfonline.com/doi/full/10.1080/13501760802662847#d1e209 (accessed 25 Sep 2024)

Stephens, T 'The Kunming-Montreal Global Biodiversity Framework' (2023) International Legal Materials 62(5) 868-887, available at: https://www.cambridge.org/core/journals/international-legal-materials/article/kunmingmontreal-global-biodiversity-framework/2B77626E4CA6C7D30AB77652A7EF56E8# (accessed 4 Sep 2024)

Trouwborst, A '*The Habitats Directive and Climate Change: Is the Law Climate Proof?*' n: C Born and others (eds.), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?* (2014) 303-324, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2554455 (accessed 12 Sep 2024)

van Zeben, J *'Subsidiarity in European Environmental Law: A Competence Allocation Approach'* (2014) 38 Harv Envtl L Rev 415-464 (428), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2791617 (accessed 2 Sep 2024)

Young, J and others, '*Does stakeholder involvement really benefit biodiversity conservation?*' (2013) Biological Conservation 158, 359-370, available at: https://www.sciencedirect.com/science/article/pii/S0006320712003734?via%3Dihub (accessed 2 Sep 2024)

Websites

AhramOnline, '*Biodiversity loss threatens human existence on earth: UN chief*' (2018), available at: https://english.ahram.org.eg/News/317856.aspx (accessed 30 Sep 2024)

Arboleas, M '*Tractors flood Brussels asking for change in EU policy'* (2024) Euractiv, available at: https://www.euractiv.com/section/agriculture-food/news/tractors-flood-brussels-asking-for-change-in-eu-policy/ (accessed 22 Aug 2024)

Aubert, G and others, '*How much will the implementation of the Nature Restoration Law cost and how much funding is available?'* (2022) Institute of European Environmental Policy (IEEP), available at: https://www.ecologic.eu/sites/default/files/publication/2023/mcdonald-22-Nature-Restoration-Law-and-Funding.pdf (accessed 19 Sep 2024)

Benton, T and Wallace, J '*Threats to biodiversity'* (2023) Chatham House, available at: https://www.chathamhouse.org/2023/04/threats-biodiversity (accessed 30 Sep 2024)

Bird Life International, '*The paper tigers of the Common Agricultural Policy'* (2023) p. 9, available at: https://www.birdlife.org/wp-content/uploads/2024/01/The-paper-tigers-of-the-Common-Agricultural-Policy-SMR-analysis.pdf (accessed 23 Sep 2024)

CEE Bankwatch Network, '*Biodiversity on the brink: What's holding back financing for nature'* (2022), available at: https://bankwatch.org/blog/biodiversity-on-the-brink-what-s-holding-back-financing-for-nature (accessed 3 Sep 2024)

Chatham House, '*The EU must face up its rule of law crisis'* (2023), available at: https://www.chathamhouse.org/2023/05/eu-must-face-its-rule-law-crisis (accessed 29 Sep 2024)

CONCITO, *'Green reform of EU`s agricultural policy'* (2023) available at: https://concito.dk/en/concito-bloggen/groen-reform-eus-landbrugspolitik (accessed 24 Sep 2024)

Court of Justice of the European Union, '*Annual Report 2023 – Statistics concerning the judicial activity of the Court of Justice'* (2024), available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/en_ra_2023_cour_stats_web_bat_22042024.pdf (accessed 28 Sep 2024)

EUROPARC Federation, '*Unlocking funds for nature: How the next EU budget must deliver for biodiversity'* (2024) Joint statement, available at: http://www.europarc.org/wp-content/uploads/2024/07/2024_07_Unlocking-funds-for-nature_How-the-next-EU-budget-must-deliver-for-biodiversity.pdf (accessed 19 Sep 2024)

European Commission, '*At a glance: Germany´s CAP Strategic Plan'* (2023), available at: https://agriculture.ec.europa.eu/document/download/3b97b15c-74fa-4d77-aae7-490eb0670ca7_en?filename=csp-at-a-glance-germany_en.pdf (accessed 23 Sep 2024)

European Commission, '*At a glance: Spain´s CAP Strategic Plan'* (2023), available at*:* https://agriculture.ec.europa.eu/document/download/337fcbc6-19a2-4c91-945b-248d63a0134c_en?filename=csp-a-a-glance-spain_en.pdf (accessed 23 Sep 2024)

European Commission, '*At a glance: Hungary's CAP Strategic Plan'* (2023), available at: https://agriculture.ec.europa.eu/document/download/98026bcc-711c-465f-9db2-1ff3d615f5b9_en?filename=csp-at-a-glance-hungary_en.pdf (accessed 23 Sep 2024)

European Commission, '*The Common Agricultural Policy: an overview'* (2023), available at: https://eu-cap-network.ec.europa.eu/common-agricultural-policy-overview_en (accessed 20 Sep 2024)

European Commission, '*Political agreement on new Common Agricultural Policy: fairer, greener, more flexible'* (2021) Press Release, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2711 (accessed 20 Sep 2024)

European Commission, '*Law and governance'* (2024), available at: https://environment.ec.europa.eu/law-and-governance_en (accessed 17 Sep 2024)

European Commission, '*Final Report of the Strategic Dialogue on the Future of EU Agriculture'* (2024), available at: https://agriculture.ec.europa.eu/document/download/171329ff-0f50-4fa5-946f-aea11032172e_en?filename=strategic-dialogue-report-2024_en.pdf (accessed 24 Sep 2024)

European Commission, '*2023 Annual Report on monitoring the application of EU law'* (2024), available at: https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2023-annual-report-monitoring-application-eu-law_en (accessed 27 Sep 2024)

European Environmental Agency, '*Biodiversity*' (2020) European briefings, available at: https://www.eea.europa.eu/soer/2015/europe/biodiversity (accessed 30 Sep 2024).

European Environment Agency, *'State of nature in the EU: Results from reporting under the nature directives 2013-2018'* (2020), available at: https://www.eea.europa.eu/publications/state-of-nature-in-the-eu-2020 (accessed 15 Sep 2024)

European Environment Agency, '*Natura 2000 sites designated under the EU Habitats and Birds Directives'* (2022), available at: https://www.eea.europa.eu/en/analysis/indicators/natura-2000-sites-designated-under (accessed 23 Sep 2024)

European Environment Agency, '*Guidelines on Concepts and Definitions: Article 17 of the Directive 92/43/EEC – Reporting period 2019-2024*' (2023), available at: https://cdr.eionet.europa.eu/help/habitats_art17 (accessed 18 Sep 2024)

European Environment Agency, '*Guidelines on Concepts and Definitions: Article 12 of Directive 2009/147/EC – Reporting period 2019-2024'* (2023), available at: https://cdr.eionet.europa.eu/help/birds_art12 (accessed 18 Sep 2024)

European Environmental Bureau, '*Joint letter to the Swedish presidency on the importance of access to justice'* (2023) available at: https://eeb.org/library/joint-letter-to-the-swedish-presidency-on-the-importance-of-access-to-justice/ (accessed 30 Sep 2024)

European Environmental Bureau (EEB), '*Stepping up Enforcement – Recommendations for a Commission "Better Compliance" agenda to ensure the application of EU environmental law'* (2022), available at: https://www.birdlife.org//wp-content/uploads/2022/06/2022-06-15_EEB-BirdLife_Enforcement-Recommendations-EC_Better-Compliance-Agenda.pdf (accessed 27 Sep 2024)

European Forest Institute, '*Protecting Old-Growth Forests in Europe: A Review of Scientific Evidence to Inform Policy Implementation - Final Report'* (2021), available at: https://efi.int/sites/default/files/images/resilience/OLD-GROWTH%20FORESTS_28.06.21.pdf (accessed 10 Sep 2024)

European Institute of Public Administration (EIPA), '*Evolving Challenges and New Approaches in EU Law Enforcement'* (2021), available at: https://www.eipa.eu/wp-content/uploads/2021/11/EIPA_Evolving-Challenges-and-New-Approaches-in-EU-Law-Enforcement.pdf (accessed 25 Sep 2024)

European Parliament, '*Biodiversity loss: what is causing it and why is it a concern?'* (2020) Topics, available at: https://www.europarl.europa.eu/topics/en/article/20200109STO69929/biodiversity-loss-what-is-causing-it-and-why-is-it-a-concern (accessed 30 Sep 2024)

European Parliament, '*Proposal for a regulation on the sustainable use of plant protection products'* (2024) Legislative Train Schedule, available at: https://www.europarl.europa.eu/legislative-train/spotlight-JD22/file-sustainable-use-of-pesticides-–-revision-of-the-eu-rules (accessed 22 Aug 2024)

Eurostat,'*Sustainable Development in the European Union: Monitoring report on progress towards the SDGs in an EU context*' (Publications Office of the European Union 2023 ed) p. 9.

available at: https://ec.europa.eu/eurostat/documents/15234730/16817772/KS-04-23-184-EN-N.pdf/845a1782-998d-a767-b097-f22ebe93d422?version=1.0&t=1684844648985 (accessed 5 Sep 2024)

Gerritsen, E and others, '*EU Biodiversity Strategy: Putting people and nature at the heart of restoration'* (2020) IEEP, available at: https://ieep.eu/wp-content/uploads/2022/12/First-impressions-of-the-EU-biodiversity-strategy-2.pdf (accessed 10 Sep 2024)

Hellenic Foundation for European & Foreign Policy, '*In focus – Common Agricultural Policy: How is EU`s expenditure for agriculture allocated?'* (2023) Greek & European Economy, available at: https://www.eliamep.gr/en/in-focus-koini-georgiki-politiki-pos-katanemontai-oi-enischyseis-sta-krati-meli/ (accessed 20 Sep 2024)

Institute for European Environmental Policy (IEEP), '*Why is nature restoration critical for the resilience of European cities?'* (2022), available at: https://ieep.eu/wp-content/uploads/2023/01/8_-Nature-Restoration-and-Cities-resilience.pdf (accessed 16 Sep 2024)

International Institute for Applied Systems Analysis, '*The future of biodiversity monitoring in Europe'* (2023), available at: https://iiasa.ac.at/policy-briefs/mar-2023/future-of-biodiversity-monitoring-in-europe (accessed 3 Sep 2024)

International Union for Conservation of Nature and Natural Resources (IUCN), '*Countries must use nature more in their climate commitments – IUCN report'* (2019) Press Release, available at: https://iucn.org/news/climate-change/201909/countries-must-use-nature-more-their-climate-commitments-iucn-report (accessed 12 Sep 2024)

Koncewicz, T '*The Białowieża case. A Tragedy in Six Acts'* (2018) Verfassungsblog, available at: https://verfassungsblog.de/the-bialowieza-case-a-tragedy-in-six-acts/ (accessed 29 Sep 2024)

Martin, S and Fornabaio, L *'The Special Status of Agriculture – Why is the CAP an exceptional policy?'* (2021) ClientEarth, available at: https://www.clientearth.org/media/rhdfzkav/the-special-status-of-agriculture-why-is-the-cap-an-exceptional-policy.pdf?utm_source=chatgpt.com (accessed 30 Sept 2024).

Natural History Museum, '*How are climate change and biodiversity loss linked?'* (2022), available at: https://www.nhm.ac.uk/discover/how-are-climate-change-and-biodiversity-loss-linked.html (accessed 30 Sep 2024)

NSW Government, '*What is biodiversity and why is it important?'* (2023) Biodiversity Conservation Trust, available at: https://www.bct.nsw.gov.au/what-biodiversity-and-why-it-important (accessed 30 Sep 2024)

Politico, '*Ursula von der Leyen has taken green enforcement behind closed doors'* (2024) available at: https://www.politico.eu/article/ursula-von-der-leyen-green-enforcement-environmental-law-policy-lack-transparency/ (accessed 28 Sep 2024)

Romano, V '*Europe enters global biodiversity conference with big ambitions'* (2022), Euractiv, available at: https://www.euractiv.com/section/energy-environment/news/europe-enters-global-biodiversity-conference-with-big-ambitions/ (accessed 4 Sep 2024)

United Nations, '*World is "on notice" as major UN report shows one million species face extinction'* (2019) UN News, available at: https://news.un.org/en/story/2019/05/1037941 (accessed 30 Sep 2024)

Wetlands International, '*Peatlands in the EU Nature Restoration Law – a Factsheet'* (2022), available at: https://europe.wetlands.org/peatlands-in-the-eu-nature-restoration-law-a-factsheet/ (accessed 16 Sep 2024)

Wildlife and Countryside, '*The Role of Case Law and Increasing Efficiency in Implementing the Birds and Habitats Directive'* (2016), available at: https://www.wcl.org.uk/docs/Joint_Links_Birds_Habitats_Directives_Case_Law.pdf (accessed 25 Sep 2024)

WWF– World Wide Fund for Nature, '*Public concern grows over nature loss'* (2021), available at: https://www.wwf.eu/?3383891/Public-concern-grows-over-nature-loss (accessed 21 Aug 2024)

WWF – World Wide Fund for Nature, '*Call for a dedicated EU Nature Restoration Fund'* (2024), available at: https://www.wwf.eu/?14503641/Call-for-a-dedicated-EU-Nature-Restoration-Fund (accessed 24 Sep 2024)

Young European Federalists, '*History of the Common Agricultural Policy'* (2023), EU Institutions and Policy, available at: https://www.thenewfederalist.eu/history-of-the-common-agricultural-policy-cap?lang=fr (accessed 20 Sep 2024)