



## EU NATURE RESTORATION LAW: DISCREETLY PROMOTING THE FINANCIALISATION OF BIODIVERSITY DESTRUCTION

On 22 June 2022, the European Commission published a legislative proposal for a nature restoration law. While this proposal contains many welcome measures, such as curbing the use of pesticides, it also puts forward very worrying proposals to put a price on nature, to base critical conservation on short-term cost-benefit analyses, and to set up market-based schemes to trade biodiversity offsets.

This is no surprise, since the European Commission has been promoting biodiversity offsetting<sup>1</sup> since 2010. Yet, while restoration is indispensable, financing it via market-based mechanisms would severely undermine its environmental integrity by fostering destroying to restore.

### **1. Nature restoration law: what is it?**

The European Commission has assessed that the EU has failed so far to curb the destruction of protected species and habitats, that preventing a further decline would not be sufficient to address the issue, and that restoration is thus needed in addition. Restoration has however failed so far due to its voluntary rather than legally binding targets.<sup>2</sup>

As a result, the European Commission has just published a new legislative proposal that introduces legally binding targets for nature restoration in every Member State. The aim is to cover at least 20% of the EU's land and sea areas by 2030 with nature restoration measures, and eventually extend these to all ecosystems in need of restoration by 2050.

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<sup>1</sup> Biodiversity offsetting refers to actions aimed at compensating for residual adverse impacts to biodiversity, when all steps have already been taken to avoid or minimize these impacts. Several forms of biodiversity offsetting exist, from 'like for like' offsetting where destruction of a specific habitat/species must be offset with the restoration/creation of the same habitat/species, to the more extreme 'like for like or better' offsetting, where the destruction of a specific habitat/species is allowed to be offset by another type of habitat/species, as long as one claims that the new one is 'better.' Under this last form, a company might for example destroy of flamingo habitat in Spain to build an airport and offset by restoring a bats habitat in Greece.

<sup>2</sup> Trinomics B.V. (2021) Support to the evaluation of the EU Biodiversity Strategy to 2020, and follow-up: Final study report (Publications Office of the EU, 2022). For a summary of main relevant findings: see Annex IX of the impact assessment. Commission Report on the evaluation of the EU Biodiversity Strategy to 2020 due in April 2022.

The new law builds on existing legislation, but covers all ecosystems rather than being limited to the Habitats Directive and Natura 2000 protected areas, aiming to put all natural and semi-natural ecosystems on the path to recovery by 2030.

The proposal notes, however, that *'nature restoration does not equal nature protection and does not automatically lead to more protected areas (...) Not all restored areas have to become protected areas. Most of them will not, as restoration does not preclude economic activity. Restoration is about living and producing together with nature by bringing more biodiversity back everywhere.'*<sup>3</sup>

The top priorities will be ecosystems with the greatest potential for carbon sequestration and for reducing the impact of natural disasters such as floods. Nature-based solutions<sup>4</sup> are expected to play a significant role.

The targets proposed include increasing biodiversity in agricultural and forest ecosystems, restoring drained peatlands and marine habitats, removing river barriers to achieve 25,000km of free-flowing rivers, and reversing the decline of pollinator populations by reducing by 50% the use of chemical pesticides by 2030. Member States will be required to develop National Restoration Plans to achieve these targets.

Overall, the benefits of restoring peatlands, marshlands, forests, heathland and scrub, grasslands, rivers, lakes and coastal wetlands listed in Annex I are estimated as being in the order of €1,860 billion, with costs estimated in the order of €154 billion. As Commissioner for the Environment, Oceans and Fisheries, Virginijus Sinkevičius stated, *'Europeans are clear: they want the EU to act for nature (...) and clear is also the business case: every euro spent for restoration will bring us at least eight in return. (...) It is a law for all people in Europe and for the generations to come, for a healthy planet and a healthy economy.'*<sup>5</sup>

## **2. Questions and concerns**

### **a. Should we base critical conservation policies on short-term cost-benefit and profitability considerations?**

The Commission proposal includes many references to cost-benefit analyses and to the monetized benefits and economic return of investments in restoration: *'investment into nature restoration adds €8 to €38 in economic value for every €1 spent, thanks to the ecosystem services. (...) The benefits outweigh the costs for each of the main ecosystem types. For example, for inland and coastal wetlands it is estimated that the monetised benefits from carbon storage alone already exceed the estimated costs of ecosystem restoration. If estimates of other ecosystem services are included then the benefit-cost ratio is even higher.'*

While it is fine to highlight potential economic benefits, the emphasis of the proposal on cost-benefit and profitability considerations is a concern: it is essential to remember that conservation policies critical to our survival are first and foremost political choices, while economic and budgetary considerations come second. Putting too much emphasis on economic considerations

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<sup>3</sup> European Commission press release, Green Deal: pioneering proposals to restore Europe's nature by 2050 and halve pesticide use by 2030, 22 June 2022 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3746](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3746)

<sup>4</sup> Nature-based solutions is a very broad term loosely defined by the European Commission as solutions that are inspired and supported by nature, which are cost-effective, simultaneously provide environmental, social and economic benefits and help build resilience. In practice, the term is now increasingly being used to refer to carbon and biodiversity offsetting without naming them.

<sup>5</sup> European Commission press release, supra

risks limiting our thinking and choices to policy options that are deemed cost-effective and profitable, at the risk of missing better options from an environmental and social perspective.

Conservation policies aiming at generating economic growth might for example focus more on restoration than on curbing destruction, even though the second option is infinitely better from a conservation perspective. This is because it is far more profitable for most private businesses to pay some developer to restore rather than to curb their own destruction of nature.

In this respect, the proposal states that *'restoration (...) should aim at optimising the ecological, economic and social functions of ecosystems, including their productivity potential,' and that the overarching objective for ecosystem restoration is 'to foster economic and societal transformation, the creation of high-quality jobs and sustainable growth.'* **Optimizing the economic functions of ecosystems and their productivity or creating economic growth has arguably nothing to do with addressing the 6<sup>th</sup> extinction of species, and including these in the overarching goals of EU restoration policies is thus extremely misguided and problematic** in our view. It indicates in our opinion that the European Commission still has not changed paradigms and continues to prioritize economic growth and competitiveness over addressing environmental emergencies and promoting lifestyle changes.

It must be remembered that in many key areas of policy making, from law enforcement to national defense and fighting terrorism, policy choices are not based primarily on economic considerations. As an example, the US Supreme Court ruled a few years ago that Clean Air Act's standards were absolute, and not subject to cost-benefit analyses.

As for the argument that conservation must be made profitable in order to attract private finance, the Commission itself has acknowledged that public funding could cover to a large extent the annual total costs of restoration.<sup>6</sup>

Another major issue with profitability considerations that we will explain in the next section is the fact that the alleged monetary benefits of conservation are often based on debunked monetary valuation methodologies, providing meaningless figures in most cases.

## **b. Should we – and is it possible to - put a price on nature?**

### **References in the Nature Restoration Law proposal**

The Commission's proposal includes several problematic references, including the EU Green Deal's objective to enhance the Union's natural capital, the Convention on Biological Diversity's call to value biodiversity and UN's recently adopted System of Environmental Economic Accounting - Ecosystem Accounting (SEEA-EA).

Here is a quick reminder of what lies behind this technical jargon:

**'Natural capital'** is a reconceptualization of nature as a series of services that benefit human well-being called 'ecosystem services', all the rest being deemed worthless and not worth preserving. It

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<sup>6</sup> 'Under the MFF 2021-2027, estimates for biodiversity spending are available for 8 funds/programmes, amounting to nearly EUR 100 billion (EUR 99,123.3 million), an average of approximately EUR 14 billion annually, of which a portion can be employed to the benefit of ecosystem restoration, including restoration projects, capacity building, knowledge exchange, monitoring and transboundary cooperation. This means that the EUR 14 billion annual biodiversity spending under the MFF could cover to a large extent the annual total costs of restoration of EUR 6-8 billion, complemented with other sources of funding mentioned below.' European Commission, impact assessment annex 11 [https://environment.ec.europa.eu/publications/nature-restoration-law\\_en](https://environment.ec.europa.eu/publications/nature-restoration-law_en)

is not a scientific term, but rather a simplistic economic concept claiming to represent nature and calling to put a monetary value on it in order to protect it. Under this approach, a forest becomes a service of carbon sequestration, a service of flood prevention and a service of providing habitats to a few species; similarly, a river becomes recreational fishing services etc.

**‘Valuing biodiversity’** aka putting a price on nature is an approach championed by the European Commission and the UN Convention on Biological Diversity. This is to be done based on monetary valuation methodologies developed by the UN under the name **‘SEEA-EA’**.<sup>7</sup>

**There are major problems with environmental accounting:** for all the philosophical debates about whether or not we should put a price on nature, the reality is that we are simply unable to do it. In practice, only a few main ecosystem services are being measured, while the others and their interdependences are being ignored, because modelling and measuring everything would be too complicated and costly, and would also require a complete scientific knowledge that we do not yet possess.

A prerequisite to putting monetary values is indeed that we have a full understanding of all the ecosystemic functions being valued and their interactions, as we may otherwise value at zero and thus facilitate the destruction of habitats and species that would have proven crucial to our survival. Yet, *‘we have only scratched the surface of what natural processes and genetic resources have to offer’*<sup>8</sup> and we are still discovering 18,000 species per year.

In addition, the monetary valuations methodologies used are well known to be biased,<sup>9</sup> conceptually weak and to provide at best lower bounds of value rather than values, by the UN’s own admission.<sup>10</sup>

If we add up the fact that only a few ecosystemic services are being taken into account and the biased monetary valuation methodologies, it is fair to conclude that the monetary values being produced do not represent nature at all. It is thus unclear how they could help in its protection, especially if they underestimate its value and thus the cost of its destruction.

Incidentally, this weak framework and valuation methodologies also mean serious risks for private investors, as assets based on uncertain prices are more likely to experience fire sales in times of downturn.

The good news is that there is absolutely no need for the natural capital approach and the monetary valuation of nature in order to protect it and put in place regulations mandating a decline in destruction.

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<sup>77</sup> United Nations, System of Environmental Economic Accounting – Ecosystem Accounting <https://seea.un.org/ecosystem-accounting>

<sup>8</sup> TEEB for policy makers, summary: responding to the value of nature <http://www.teebweb.org/publication/teeb-for-policy-makers-summary-responding-to-the-value-of-nature/>

<sup>9</sup> Hache F, Green Finance Observatory, 50 shades of green part 2: ghe fallacy of environmental markets <https://greenfinanceobservatory.org/wp-content/uploads/2019/05/50-shades-biodiversity-final.pdf>

<sup>10</sup> The earlier version of the SEEA-EA framework included the following statement: *‘the present chapter introduces possible areas for integration of ecosystem accounting and standard presentations of economic accounts but deliberately refrains from providing specific recommendations, for the following reasons: (a) There are differing views about the meaningfulness of integrated measures and accounts in light of the assumptions required for valuation in monetary terms and, consequently, about the ability to use integrated measures and accounts for policy purposes.’* In other words, the authors of the framework do not even agree among themselves that the results are meaningful. System of Environmental Economic Accounting, What is the SEEA?. Online. Available at: <https://seea.un.org/>

## The new environmental economic account modules

The clear indications that the Commission is pushing for a debunked monetary valuation of nature are confirmed by another legislative proposal published a few weeks after the nature restoration and calling to introduce new environmental accounts on forests and ecosystems<sup>11</sup> in EU statistics.

Member States will now be required to *'produce statistics on the size of ecosystems, on their "health conditions and on the benefits they produce for businesses and citizens.'*<sup>12</sup> The ecosystem accounts *'bring together economic and environmental information'* and aim at integrating *'biodiversity and natural capital considerations with mainstream economic questions on resource allocation and sustainability.'*

The new ecosystem accounts will measure 3 types of services:

- i. Provisioning services: crop provision (food, fodder, energy, grazed biomass), pollination, wood provision;
- ii. Regulating and maintenance services: air filtration (through the fixing of pollutants in trees & other ecosystem components), global climate regulation (sequestration of GHG in soils and trees), local climate regulation (regulating atmospheric conditions in urban environments through vegetation);
- iii. Cultural services: nature-based tourism related services. Nature-based tourism's *'contributions shall be reported in number of overnight stays in hotels, hostels, camping grounds, etc. that can be attributed to visits to ecosystems.'*

*'The Commission shall carry out a methodological and feasibility study on the monetary valuation of ecosystem services. Based on the results of this study, the Commission may (...) define, by means of a delegated act, for which of the ecosystem services (...) **monetary values shall be reported** (...) as well as a list of acceptable methods for establishing these monetary values.'* ***'The first reference year is 2024.'***

### This proposal raises 4 concerns:

First, it is arguably not very democratic to publish such an important proposal mid-July, when many citizens are about to go on their summer break.

Secondly, much data is already being collected that measures the state of biodiversity in Europe; while additional data may be necessary, it should be data based on scientific metrics, not on simplistic economic concepts such as ecosystem services. Indeed, as the proposal acknowledges, ecosystem services are not measures of ecosystemic functions but only *'the benefits ecosystems provide to economic and other human activities.'* Do we really believe that the benefits that ecosystems provide to economic activities are the most relevant criteria to determine their value and need for conservation?

In addition, there is absolutely no need for monetary values from a conservation perspective, only for the physical measurement of the state of ecosystems. Promoting ecosystem services and their monetary valuation is therefore arguably a neoliberal approach to biodiversity conservation based

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<sup>11</sup> European Commission, proposal for a regulation amending Regulation (EU) No 691/2011 as regards introducing new environmental economic accounts modules, [https://eur-lex.europa.eu/resource.html?uri=cellar:ddb7c711-010b-11ed-acce-01aa75ed71a1.0010.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:ddb7c711-010b-11ed-acce-01aa75ed71a1.0010.02/DOC_1&format=PDF)

<sup>12</sup> European Commission, Daily News 11/07/2022, Eurostat: Commission proposes new statistics on ecosystems to measure nature restoration [https://ec.europa.eu/commission/presscorner/detail/es/mex\\_22\\_4464](https://ec.europa.eu/commission/presscorner/detail/es/mex_22_4464)

on the debunked idea that economic incentives and markets would protect nature better than binding regulations. Put differently, we understand this approach to be based on the underlying beliefs that business activities destroying biodiversity should not be regulated and curbed but instead gently nudged financially, as economic growth is as or more important than conservation, and lifestyle change and sobriety are not even contemplated.

The list of ecosystem services mentioned seems incredibly partial and simplistic. It ignores for example all the spiritual values of nature. Likewise, the number of tourists in hotels and campsites has arguably nothing to do with the ecological importance of a natural site. A partial list is very problematic and worse than no list at all, because it makes all that is not on the list invisible, valued at zero, and therefore allowed to be destroyed without even being measured and reported.

In sum, this proposal is in our view not so much about collecting additional data in order to improve conservation policy-making, as it is about transforming EU conservation from binding regulations curbing destruction to putting a price on its destruction, in order to improve conservation marginally while protecting economic growth.

While we understand the importance of ensuring prosperity in a context of high inflation and citizens' concerns about their purchasing power, failing to address seriously critical biodiversity loss will yield incomparably worse consequences and suffering than losing a few points of GDP.

### **c. Should the EU create a market to trade permits to destroy biodiversity?**

#### **Context**

The European Commission has been promoting for the past 12 years biodiversity offsetting, i.e., the creation of a market to trade permits to destroy biodiversity.

In 2010, the Commission financed a report promoting 'like for like or better'<sup>13</sup> biodiversity offsetting – the most extreme version - under the name 'habitat banking.'<sup>14</sup> The Commission then tried to introduce such a market scheme via a revision of the Habitats and Birds directives in 2014. Luckily, the public backlash that ensued made the Commission abandon its proposal at the time.

The Commission continued nevertheless to promote this approach, except that its name changed, as more and more people realized that offsetting did not offset. Offsetting is a word that has almost disappeared from EU legislative proposals and media articles, to be replaced by 'nature-based solutions' and 'ecosystem-based approaches.' Indeed, as a response to several written parliamentary questions, **the Commission has recently confirmed that its definition of nature-based solutions includes 'like for like or better' biodiversity offsetting.**<sup>15</sup>

Given this history, it would have been surprising to see no promotion of biodiversity offsetting in the nature restoration law proposal, all the more than several building blocks are already in place:

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<sup>13</sup> As discussed earlier, 'like for like or better' allows under certain conditions to restore a different habitat than that destroyed and still claim that it compensates for its destruction. The much sounder alternative is 'like for like' offsetting where the same habitat that was destroyed must be restored. Like for like is infinitively less worse from an environmental integrity perspective, but more complicated to transform into a market to trade permits to destroy.

<sup>14</sup> Eftec, IEEA, The use of market-based instruments for biodiversity protection, the case of habitat banking, February 2010 [https://ec.europa.eu/environment/enveco/pdf/eftec\\_habitat\\_technical\\_report.pdf](https://ec.europa.eu/environment/enveco/pdf/eftec_habitat_technical_report.pdf)

<sup>15</sup> Parliamentary questions 26 January 2022 Answer given by Mr Sinkevičius on behalf of the European Commission Question reference: E-005319/2021 [https://www.europarl.europa.eu/doceo/document/E-9-2021-005319-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-005319-ASW_EN.html)  
Parliamentary questions 29 March 2022 Answer given by Mr Sinkevičius on behalf of the European Commission Question reference: E-000485/2022 [https://www.europarl.europa.eu/doceo/document/E-9-2022-000485-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2022-000485-ASW_EN.html)

EU's 2030 biodiversity strategy is indeed already based on a 'Net Gain Principle' – net meaning compensation between destruction and restoration; what is missing to create such a market is essentially mandatory restoration targets to create the demand for such credits, and an extension of the scope of restoration beyond Natura2000 to areas subject to a lower protection status, where offsetting could take place.<sup>16</sup>

### **Proposal, impact assessment and annexes**

The Nature Restoration Law proposal itself mentions several times nature-based solutions, explaining that '*restoring ecosystems to good condition means providing **nature-based solutions** (emphasis ours in all quotes). that help both mitigate climate change and pursue the objectives of the EU strategy on adaptation.*' The proposal also states that Member States should **make 'the best use of market-based instruments.'** This is echoed by the Commission's related Q&A, which states that '*the Commission will promote a new business model for land-based carbon removals, including financial incentives to rollout nature-based solutions. **Market-based instruments could be promoted by Member States to help cover costs of restoration** and to prevent deterioration, for example fiscal approaches, payments for ecosystem services, result-based payment schemes, **and others.***'<sup>17</sup>

**The call to promote market-based solutions could not be clearer in our view.** The fact that offsetting is not mentioned explicitly but can be understood to be implicitly part of 'and others' and 'nature-based solutions' merely reflects the fact in our opinion that the Commission knows how unpopular biodiversity offsetting is, and is thus being cautious after its early failed attempt at introducing it.

In addition, **hidden in pages 138-142 of annex 12 of the impact assessment is a section on private investments that spells it out more clearly, mentioning explicitly offsetting and compensation.**

This section starts by stating that '*private and/or commercial finance and investment solutions are increasingly considered as an option. (...) At the same time awareness is growing that opportunities to invest in nature are huge. According to the World Economic Forum, action for nature-positive transitions at the global level could generate up to \$10.1 trillion in annual business value and create 395 million jobs by 2030.*'<sup>18</sup>

The section explains further that '*there are multiple examples of schemes and partnerships that aim at channeling private investments towards biodiversity objectives, such as (...) CDC Biodiversité's **offset banking.***' *'Market-based instruments could be promoted to help cover costs of restoration and to prevent deterioration, for example fiscal approaches, payments for ecosystem services, result-based payment schemes, etc. (...) In sum, while these figures provide order of magnitude estimates only, it supports the idea that there is a variety of sources of funding available to finance the costs for restoration, maintenance (**including compensation**) and enabling measures.*'<sup>19</sup> *'Efforts are under way to establish a dedicated 'EUR 10 billion natural-capital and circular economy*

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<sup>16</sup> Offsetting in areas under strict protection would have no additionality as the areas cannot be destroyed in the first place, and it is therefore not possible to claim an additional impact for the project.

<sup>17</sup> European Commission, Questions and Answers on Nature Restoration Law: restoring ecosystems for people, climate and planet, 22 June 2022 [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_3747](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_3747)

<sup>18</sup> European Commission, Impact assessment accompanying the proposal part 2, [https://environment.ec.europa.eu/publications/nature-restoration-law\\_en](https://environment.ec.europa.eu/publications/nature-restoration-law_en)

<sup>19</sup> European Commission, supra

*investment initiative' (...) taking into consideration lessons learned from other public private funds such as the **Natural Capital Financing Facility.**'*

We find the references to 'market-based instruments,' 'offset banking' and 'compensation' to be pretty clear, as is the reference to the Natural Capital Financing Facility, a financing instrument for biodiversity that supports among others '*biodiversity offsets/compensation beyond legal requirements, for example **compensation pools for on-site and off-site compensation projects.***'<sup>20</sup> The more specific terms and references in the annex thus confirm in our view that the Commission is proposing biodiversity offsetting as part of the options to channel private finance to biodiversity.

## Concerns

Biodiversity offsetting is problematic on many levels. First, this is not a new idea, it already exists in several countries and has an appalling environmental track record: from Australia to Canada and the USA, biodiversity offsets have been found to fail in two thirds to 75% of cases.<sup>21</sup> This is not surprising, since '*there is evidence within the restoration ecology literature that shows that the science of restoration is still in its infancy and demonstrates mixed to poor outcomes. (...) Restoration ecology is a relatively young and inexperienced discipline with a still-embryonic and patchy evidence base. Given the complexity and variability of natural systems, the ecological community is increasingly recognizing that recreating or restoring ecosystems to some specified former state is often unlikely to be feasible, especially within reasonable timeframes.*'<sup>22</sup>

'Like for like or better' offsetting, i.e., the allowance under certain conditions to offset the destruction of one type of habitat / species with the restoration of another one increases exponentially the risks to environmental integrity.

Beyond environmental concerns, offsetting in general has also been found to often result in land-grabbing, conflicts over land and human rights abuse.<sup>23</sup>

<sup>20</sup> EIB, Natural Capital Financing Facility <https://www.eib.org/en/products/mandates-partnerships/ncff/index.htm>

<sup>21</sup> In Australia, a report by the Nature Conservation Council found that 'in 75% of cases, offsets resulted in 'Poor' or 'Disastrous' outcomes for wildlife and bushland, while only 25% resulted in 'Adequate' outcomes. None resulted in 'Good' outcomes for nature.' It concluded that instead of helping, offsetting pushes species to the brink, adding 'extinction pressure to the very species these schemes are supposed to protect.' Scientific evaluation studies also found 2/3 of expected offsets completely failed to materialise in Australia. In Canada, researchers found that 63% of projects that offset fish habitat loss failed to achieve their targets. Another study analysing 558 offset projects between 1990-2011 found that despite offset attempts the net loss of habitats was 99%. In the USA, scientists looking at 12 of the longest established wetland mitigation areas in Ohio found that many did not even meet the regulation's objectives. More broadly, a study looking at a broad range of restoration projects around the world found that up to two-thirds of offsets aiming to restore an ecosystem were unsuccessful. The figure was even higher for offsets that created ecosystems from scratch.

Nature Conservation Council of NSW, Paradise Lost - The weakening and widening of NSW, biodiversity offsetting schemes, 2005-2016, 2016. Online. Available at: [https://www.nature.org.au/media/265228/bio-offsetting-report\\_v14.pdf](https://www.nature.org.au/media/265228/bio-offsetting-report_v14.pdf)

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<https://www.huntervalleynews.net.au/story/4518198/new-study-finds-development-trumps-environment/>

Nordic Council of Ministers, Planning biodiversity offsets – Twelve Operationally Important Decisions, 2018. Online. Available at:

<https://norden.diva-portal.org/smash/get/diva2:1201285/FULLTEXT01.pdf>

Quigley JT1, Harper DJ, Effectiveness of fish habitat compensation in Canada in achieving no net loss, Environmental management, 2006.

Online. Available at: <https://www.ncbi.nlm.nih.gov/pubmed/16456631>

Mack John J., Micacchion Mick, An ecological assessment of Ohio mitigation banks: Vegetation, Amphibians, Hydrology, and Soils. Ohio EPA Technical Report WET/2006-1. Ohio Environmental Protection Agency, Division of Surface Water, Wetland Ecology Group, Columbus, Ohio, 2006. Online. Available at: [https://www.epa.state.oh.us/Portals/35/wetlands/Bank\\_Report\\_Ohio\\_Final.pdf](https://www.epa.state.oh.us/Portals/35/wetlands/Bank_Report_Ohio_Final.pdf)

<sup>22</sup> CEEweb for Biodiversity, Critical review of Biodiversity Offset track record – For the purposes of IEEP in their review of 'Policy Options for a potential EU No Net Loss Initiative'. Online. Available at: [http://www.ceeweb.org/wp-content/uploads/2011/12/Critical-review-of-biodiversity-offsets-for-IEEP\\_Final.pdf](http://www.ceeweb.org/wp-content/uploads/2011/12/Critical-review-of-biodiversity-offsets-for-IEEP_Final.pdf)

<sup>23</sup> Kill Jutta, Franchi Giulia, Rio Tinto's biodiversity offset in Madagascar – Double landgrab in the name of biodiversity? World Rainforest Movement, Re:Common, [https://wrm.org.uy/wp-content/uploads/2016/04/RioTintoBiodivOffsetMadagascar\\_report\\_EN\\_web.pdf](https://wrm.org.uy/wp-content/uploads/2016/04/RioTintoBiodivOffsetMadagascar_report_EN_web.pdf) Vidal John, the tribes paying the brutal price of conservation, The Guardian, August 2016. Online. Available at: <https://www.theguardian.com/global-development/2016/aug/28/exiles-human-cost-of-conservation-indigenous-peoples-eco-tourism> Re:common, Turning forests into hotels The true cost of biodiversity offsetting in Uganda, Apr 2019. Online. Available at: <https://www.recommon.org/eng/turning-forests-into-hotels-the-true-cost-of-biodiversity-offsetting-inuganda/> Friends of the Earth UK, New tricks: biodiversity offsetting and mining, February 2019. Online.

Equally important, biodiversity offsetting would divert the political momentum away from the need to curb our destruction and towards the illusion that we can continue to destroy as long as we restore. To be clear, **restoration is a good thing, but only as long as it comes in addition to and not instead of curbing destruction, since both are not comparable.** The same dynamic is already at play in climate policies where rich countries often prefer to plant a few trees where land is cheap rather than change their lifestyle and curb more drastically their emissions. Thus, while we need both to curb our destruction and to restore, restoration should never be considered as and financed through offsets.

Last but not least, **setting up a biodiversity offset market could transfer critical conservation decisions for our future to financial markets** and their well-known irrational mood swings. Do we want to let private speculators choose what is the price of destruction and thus what is to be saved or destroyed?

### **3. The international context: UK's Biodiversity Unit Market and the CBD COP15**

The Commission's suggestion comes in an international context that favours the creation of such markets, thus giving it additional political momentum.

A growing number of private interests and coalitions are lobbying hard in this direction, including the Taskforce on nature markets,<sup>24</sup> the Business for Nature Coalition, the Finance for Biodiversity Initiative and several others.

The UK government has also recently stated its efforts to create a 'like for like or better' biodiversity offset market.<sup>25</sup>

Lastly, the UN Convention on Biological Diversity has been promoting for a long time the concept of '**Land Degradation Neutrality,**' a concept that calls to avoid and minimize land degradation and then restore/offset the residual impact.<sup>26</sup> The first draft of the Post 2020 biodiversity framework to be finalized at the COP15 in December also called to '*internalize the value of nature,*' to '*fully integrate biodiversity values in policies*' and made a reference to '*net gain.*'<sup>27</sup> It is therefore possible that the CBD will unveil a proposal for an international biodiversity offset market at the COP15.

### **Conclusion**

The nature restoration law includes many welcome proposals, such as curbing the use of pesticides.

The suggestion to finance restoration in part via market-based instruments such as biodiversity offset markets is very problematic; such market schemes would most likely result in environmental failure and increase social and geopolitical tensions over land. There is also absolutely no need to

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Available at: <https://policy.friendsoftheearth.uk/publications/new-tricks-biodiversity-offsetting-and-mining> IWGIA, New green powers in the global land grab violate indigenous peoples' rights, October 2017. Online. Available at: <https://www.iwgia.org/en/focus/land-rights/2520-new-green-powers-in-the-global-land-grab-violateindigenous-peoples-rights> International Institute for Environment and Development, 'Land grabbing': is conservation part of the problem or the solution?, <https://pubs.iied.org/pdfs/17166IIED.pdf>

<sup>24</sup> Taskforce on nature markets, The Future of Nature Markets <https://www.naturemarkets.net/publications/the-future-of-nature-markets>

<sup>25</sup> Hache F, Green Finance Observatory, UK's forthcoming biodiversity unit market: trading permits to destroy nature as a way to protect it? <https://greenfinanceobservatory.org/wp-content/uploads/2022/06/UK-Biodiversity-Unit-Market-2.0-1.pdf>

<sup>26</sup> 'Restoration is an integral part of the LDN response hierarchy and for many countries will play a key role in offsetting degradation and thus making the achievement of LDN possible.' UNCCD, Land Degradation Neutrality for Biodiversity Conservation: How healthy land safeguards Nature, 2019 [https://catalogue.unccd.int/1340\\_LDN\\_BiodiversityGM\\_Report.pdf](https://catalogue.unccd.int/1340_LDN_BiodiversityGM_Report.pdf)

<sup>27</sup> Hache F, Green Finance Observatory, Serious concerns and serious questions – GFO's assessment of the first draft of the post 2020 global biodiversity framework <https://greenfinanceobservatory.org/wp-content/uploads/2021/07/GFO-assessment-of-the-first-draft-of-post2020.pdf>

create such markets from a conservation perspective, and we believe that critical conversation decisions should not be transferred to financial markets.

We also believe that addressing the 6<sup>th</sup> extinction of species should not be based upon short term cost-benefit analyses and profitability considerations, especially given the documented weakness of the valuation models.

We therefore hope to see a removal of the references to nature-based solutions, market-based instruments and the addition of an explicit exclusion of offsetting in the proposal.

Should offsetting be allowed nevertheless in the future, it is crucial in our view that:

- EU's Net Gain principle be split into 2 metrics, reporting separately on our progress on curbing destruction and on restoration. This is to remove the political temptation to continue to destroy and obfuscate it behind ever higher restoration targets;
- No market-based mechanism be allowed; restoring and offsetting a specific destruction does not require at all the granting of permits to destroy elsewhere in the future, and does not require either the allowance to trade destruction permits in a marketplace, these are 2 separate things;
- Only like for like offsetting be allowed and within a limited distance from where the destruction took place.

Last, we encourage citizens and policy makers to monitor carefully the forthcoming **natural capital and circular economy investment initiative** and the forthcoming **taxonomy delegated act on biodiversity**, as they are likely to provide additional details on these developments.

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