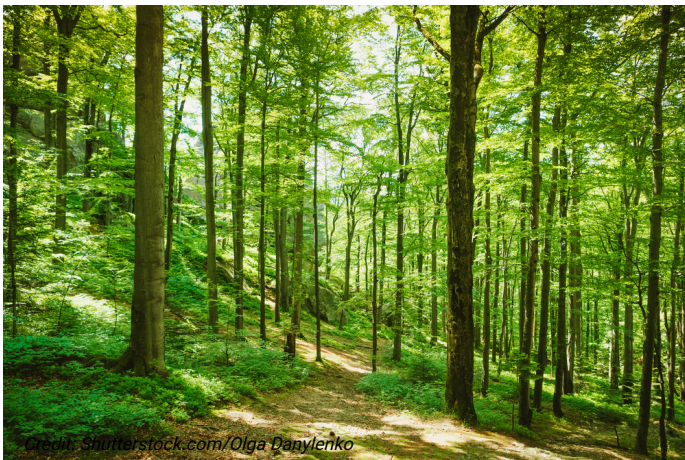




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### Critics say the law is a “diminished” version compared to earlier drafts and it could face legal challenges.



The EU Council has given final approval to a landmark nature restoration law following months of delay, political turmoil and criticism from both climate activists and ESG sceptics.

On 17 June 2024, a majority of 20 countries, representing 66% of the population, gave final approval to the Nature Restoration Law achieving the required threshold for passage after Austria’s Environment Minister revolted against her coalition partners and changed the country’s previous stance to vote in favour.

To pass, EU laws require a qualified majority of 55% of countries representing 65% of the bloc’s population. A previously scheduled vote, on 25 March 2024, was cancelled after Austria and Belgium indicated they would abstain, and Sweden, Finland, Poland, Italy, the Netherlands and Hungary planned to vote against.

The law will require member states to restore at least 20% of the EU’s land and sea areas by 2030, although Greenpeace said the initiative had been “diminished” after language was softened and accountability measured weakened in some areas.

The debates surrounding the law are similar to the delays and criticisms that beset the legislative process over the Corporate Sustainability Due Diligence Directive. Both landmark legislative initiatives are part of the EU’s Green Deal, in which numerous major proposals face uncertainty due to the rise in influence of ESG sceptics at state and EU-level.

## **Growing recognition of economic impact of nature**

The European Commission first proposed the Nature Restoration Law in June 2022, aiming to restore ecosystems, habitats and species across the EU's land and sea areas, after studies indicated that more than 80% of European habitats are in poor environmental conditions.

The issue of depleted nature and biodiversity has been of increasing significance for businesses. Writing in support of the law in June 2023, Frank Elderson, a member of the Executive Board of the European Central Bank (ECB) said "the ECB has started looking at the dependence on nature of more than 4.2 million individual companies accounting for over €4.2 trillion (US\$4.5 trillion) in corporate loans."

In the eurozone, approximately 72% of companies are "highly dependent" on at least one ecosystem service, Elderson said, adding that severe losses of functionality in the relevant ecosystem would translate into "critical economic problems" for such companies.

The EU Parliament and EU Council reached a political agreement on the terms of the law in November 2023, with final approval usually a formality after that point.

However, political support for the initiative waned across the EU in early 2024 as farmers protested against ESG regulations across numerous member states.

The change in stance from Austria came from climate minister Leonore Gewessler, a Green party politician, who did not get approval from her coalition government partner the conservative People's Party.

The disagreement reportedly brought Austria's coalition government to the brink of collapse, and chancellor Karl Nehammer, who opposed the Nature Restoration Law, said on X that Gewessler's vote had been illegal.

## **Headline targets survive, with concessions to farmers**

The regulation sets restoration targets for different ecosystems according to their states of depletion. It covers coastal and freshwater, forest, agricultural and urban ecosystems, including wetlands, grasslands, forests, rivers and lakes, as well as marine ecosystems, including seagrass and sponge and coral beds.

The headline targets have largely not been changed from the earlier agreement.

For habitats deemed in poor condition member states will need to take measures to restore:

- at least 30% by 2030;
- at least 60% by 2040; and
- at least 90% by 2050.

The regulation also introduces specific requirements for measures to reverse the decline of pollinator populations by 2030 at the latest, and member states will need to put in place measures aiming to restore drained peatlands and help plant at least three billion additional trees by 2030.

Member states will be required to submit national restoration plans to the European Commission, showing how they will deliver on the targets. They must also monitor and report on their progress.

The biggest changes to the earlier versions relate to agricultural ecosystems, indicating concessions to farmers. In these ecosystems, targets will be measured according to “efforts” rather than results. Experts from Greenpeace told Lexology PRO that in practice this means that any impact on agricultural land will be solely based on how much ambition member states include in their national restoration plans, rather than outcomes.

The final draft also includes an “emergency brake” to suspend implementation in agricultural habitats in the event of potential food security issues, and specific targets for greening cities were scrapped.

## **Recognising the financial impact of nature can help companies reduce risk**

Experts told Lexology PRO that the law is a welcome recognition of the potential impact of physical climate and biodiversity risks, which should support more companies to reduce this risk.

Angela McClellan, director of sustainable finance at PwC in Germany told Lexology PRO, “The passing of the Nature Restoration Law demonstrates that the EU recognises the dependence of the economy on biodiversity and ecosystems.”

McClellan pointed to a PwC-WWF Germany survey published in May 2023, which found that half of financial companies either already have set or are in the process of formulating biodiversity-related goals to reduce any negative impact and address the related risks and opportunities.

“Furthermore, financial institutions increasingly recognise the synergies between biodiversity and climate protection measures,” she said. “The new legislation will contribute to more companies going down that route so that the foundations of our economy can be preserved and restored.”

Rachel Saltzman, partner at Hunton Andrews Kurth in Washington DC, said companies, particularly those with stakes in agriculture and real estate, should look out for opportunities to engage with state governments on the new law.

“Now that the EU Council has finalized the Nature Restoration Law, the next step is for EU member states to develop plans to meet the targets specified in the legislation,” she said. “To have a voice in how these plans take shape, companies should make sure to identify any stakeholder engagement processes in countries where they operate.”

Companies can also prepare for how national adoption will impact their operations, and use their existing reporting mechanisms to begin preparing by understanding their own biodiversity and nature impact. This will help them to prepare for more restrictive regulations on their businesses should these be needed for states to meet their nature targets, she said.

“Companies should start to evaluate what they know about ecosystem impacts of their operations, with the purpose of assessing business risks that may stem from more restrictive policies,” said Saltzman. “Companies that are subject to the Corporate Sustainability Reporting Directive may have already begun to gather such information and should evaluate it in light of the Nature Restoration Law.”

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