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Draft Directive/...../EU of the [European Parliament and of the Council] of (date) on securing the rights of Nature

[THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,]

Having regard to the Treaty on the functioning of the European Union and in particular Article 192(1) thereof,

Having regard to the proposal of the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas,

1. Article 191 of the Treaty provides that Union policy on the environment is to contribute to the objectives of preserving, protecting, and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources and promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.
2. The 7th Environment Action Programme to 2020 entitled ‘Living well, within the Limits of our Planet’ puts forward a vision for 2050 in the following terms: ‘In 2050, we live well, within the planet’s ecological limits. Our prosperity and healthy environment stem from an innovative, circular economy where nothing is wasted and where natural resources are managed sustainably, and biodiversity is protected, valued and restored in ways that enhance our society’s resilience. Our low-carbon growth has long been decoupled from resource use, setting the pace for a safe and sustainable global society.’¹
3. In order to achieve these objectives it is necessary to build rapidly and urgently on the work of the previous six Environment Action Programmes and the legislation adopted pursuant to them in diverse fields.
4. The final assessment of the Sixth Community Environment Action Programme (“6th EAP”) concluded that unsustainable trends still persist in the four priority areas identified

¹ 1386/2013/EU OJ L 354 of 28.12.2013, p. 176 .3

in the 6th EAP: climate change; nature and biodiversity; environment and health and quality of life; and natural resources and wastes².

5. According to the report of the European Environment Agency entitled 'The European Environment – State and Outlook 2010,' a number of major environmental challenges still remain, and serious repercussions will ensue if nothing is done to address them.
6. Global systemic trends and challenges, related to population dynamics, urbanisation, disease and pandemics, accelerating technological change and unsustainable economic growth add to the complexity of tackling environmental challenges and achieving long-term sustainable development. Ensuring the Union's long-term prosperity requires taking further action to address those challenges.³
7. Environment and climate objectives should be supported by adequate investments, and funds should be spent more effectively in line with those objectives.⁴
8. Environmental integration in all relevant policy areas is essential in order to reduce pressures on the environment resulting from the policies and activities of other sectors and to meet environmental and climate-related targets.⁵
9. The Union has agreed to achieve the following by 2020: a reduction of at least 20% of its greenhouse gas emissions; levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment; the objective that chemicals are produced and used in ways that lead to the minimisation of significant adverse effects on human health and the environment.⁶
10. However, particular problems arise from an inadequacy of attention to the support and protection of the overall ecological environment of which humans form a part and depend entirely for their existence and wellbeing, both now and in future.
11. The natural world requires time to adapt and evolve to new circumstances but the rate of change, including through climate change, exceeds the ability of living organisms to adapt and threatens both their and our interdependent human existence.
12. Many environmental challenges are global and can only be fully addressed through a comprehensive global approach, while other environmental challenges have a strong

² 1386/2013/EU OJ L 354/171 - 28.12.2013 para 4

³ 1386/2013/EU OJ L 354/171 para 7

⁴ 1386/2013/EU OJ L 354/173 para 28

⁵ 1386/2013/EU OJ L 354/173 para 29

⁶ Decision No 1600/2002/EC

regional dimension. This requires cooperation with partner countries, including neighbouring countries and overseas countries and territories.⁷

13. Living in balance and harmony with nature is essential for all life. Loss of biodiversity, desertification, climate change, and the disruption of a number of natural cycles are among the costs of our disregard for nature and the integrity of its ecosystems and life-supporting processes. As recent scientific work suggests, a number of planetary boundaries are being transgressed and others are at risk of being so in a business-as-usual world.
14. Since the industrial revolution, nature has been treated as a commodity that exists largely for the benefit of people, and environmental problems have been considered as solvable through the use of technology. In order to meet the basic needs of a growing population within the limits of the Earth's finite resources, there is a need to devise **new** models for production, consumption and the economy as a whole that **does not erode but moves towards enhancing ecosystem resilience** ~~operate in harmony with nature~~.⁸
15. In the decades following passage of major environmental laws in the European Union and around the world, the earth's ecosystems, natural communities, species, and climate are in worse condition than ever before⁹. Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen¹⁰.
16. Studies are finding that we are the midst of the sixth great extinction. The rapid loss of species we are seeing today is estimated by experts to be between 1,000 and 10,000 times higher than the natural extinction rate. The Living Planet Index, which measures more than 10,000 representative populations of mammals, birds, reptiles, amphibians and fish, has declined by 52 per cent since 1970.¹¹
17. The problems caused by invasive non-native species are so serious that the introduction of these species is identified as one of the main causes of biodiversity loss worldwide.¹² **This is one example of how taking a mechanistic approach with a living system ends up eroding ecosystem resilience.**

⁷ 1386/2013/EU OJ L 354/173 para 31

⁸ <http://www.harmonywithnatureun.org/>

⁹ http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_SPMcorr1.pdf

¹⁰ Ibid

¹¹ WWF Living Planet Report 2014

¹² <http://www.npws.ie/media/npws/publications/media,3701,en.pdf>

18. Studies are finding that global warming is accelerating at a far faster pace than previously believed, and the United Nations has declared that we are facing “major planetary catastrophe.”¹³
19. Human actions are widely understood to be interfering with the **resilience of the earth’s natural systems** ~~ability of the earth’s natural systems to exist, flourish, regenerate, and evolve~~. We recognize that the health and welfare of all beings, human and nonhuman, depends on a fundamental change in the **perceived** relationship between humankind and the **rest of the** natural world.
20. Not only do biodiversity loss and the degradation of ecosystems in the Union have important implications for the environment and human well-being, they also have impacts on future generations and are costly for society as a whole.¹⁴
21. The Union is densely populated, and over 70 % of its citizens live in urban and peri-urban areas and face specific environmental and climate-related challenges. For example, Government estimates suggest that air pollution may have contributed to around 1,000 premature deaths in London each year, with recent figures showing this could be closer to 3,000 deaths.¹⁵ Every year the lives of 357 people are saved in Dublin through the ban on smoky coal, and the subsequent improvement in air quality. Clean air reduced the number of deaths from heart attacks by 15% and deaths from respiratory illness by 10%.¹⁶
22. Following decades of continued environmental degradation, environmental legal frameworks based on regulating human use of nature **in a system that characterises of ecosystems, species and other manifestations of nature as objects under the law,** ~~reflecting a mechanistic worldview~~, are proving unable to protect the natural environment and achieve sustainability.
23. The Union has agreed to stimulate the transition to a green economy and to strive towards an absolute decoupling of economic growth and environmental degradation and achieving a land degradation neutral world in the context of sustainable development.¹⁷

¹³*The World Economic and Social Survey 2011: The Great Green Technological Transformation*, published today by the UN Department of Economic and Social Affairs (DESA).

¹⁴ 1386/2013/EU OJ L 354/173 para 23

¹⁵ “Estimating Local Mortality Burdens Associated with Particulate Air Pollution, Public Health England PHE-CRCE-010 2014 UK Government

¹⁶ The Lancet, [Volume 360, Issue 9341](#), Pages 1210 - 1214, **Effect of air-pollution control on death rates in Dublin, Ireland: an intervention study**. Original Text Prof [Luke Clancy](#) MD [a](#), [Pat Goodman](#) PhD [b](#), [Hamish Sinclair](#) PhD [c](#), Prof [Douglas W Dockery](#))

¹⁷ Council conclusions of 11 June 2012 (11186/12); COM(2011) 571

24. In order to achieve this objective it is necessary for law to facilitate an economic paradigm that recognises the intrinsic value of nature and functions in harmony with nature.
25. Existing environmental legal frameworks, throughout the European Union and most of the countries around the world, regulate human use of nature and treat nature predominantly as property with no legal rights of its own.
26. Existing legal frameworks, throughout the European Union and around the world, do not recognise that we have a fundamental relationship with nature as the source of life itself, so there is no legal duty of care and no obligation towards nature.
27. Nations, municipalities, and people around the world are moving toward a non-anthropocentric and rights-based framework for protecting nature, recognising that environmental laws based on regulating human use of nature are unable to adequately protect the natural world or achieve sustainability.
28. Nations, municipalities, and people around the world are coming to a shared understanding that securing the human right to a healthy environment depends on securing the right of the natural environment itself to be healthy and thrive.
29. Recognition of rights of nature, accompanied by obligations and duties to give practical effect to them, has already been established within the wider world. Outside the Union, countries including Ecuador, Bolivia, New Zealand, Mexico, India, Belize, Indonesia and the United States have introduced laws, or given recognition in legal proceedings and judicial decisions to rights of nature and the concept of nature as a living being and as having intrinsic value.¹⁸
30. Article 13 of the Treaty of the Union recognises that animals are sentient beings and places an obligation to pay full regard to their welfare.
31. Establishing a rights-based framework for the protection of nature continues a long and necessary history securing rights for the “right-less” – including women and children – who were once considered “property” under the law.
32. Recognising the rights of nature is essential to achieving sustainability, harmony, and balance between humankind and the natural world, of which we are an intrinsic and interdependent part.

¹⁸ <http://www.gaiafoundation.org/earth-law-precedents>

33. Long-term sustainability of the environment and of ecosystems supporting human activity, including trade and commerce, should be enhanced through formal recognition of the fundamental rights of nature.
34. Recognising rights of nature, however, implies placing obligations and responsibilities on humans, including corporate bodies and society at large through its institutions, to respect those rights and render them real, tangible and effective.
35. Adopting and implementing the principle of recognition of rights of nature gives effect to the World Charter for Nature, which was adopted by over 100 member states of the General Assembly of the United Nations in 1982. The World Charter for Nature recognises the intrinsic value of nature and that human beings are a part of nature. It calls for human beings to be guided by a moral code of conduct that does not compromise the integrity of those other ecosystems of species with which human beings co-exist.
36. Subsequently, civil society throughout the World has demonstrated a strong wish to see the principle of recognition of rights of nature established in law. The Earth Charter created by the independent Earth Charter Commission and convened as a follow-up to the 1992 Earth Summit contains a global consensus statement of values and principles for a sustainable future. The Charter was developed over nearly a decade through an extensive process of international consultation, to which over five thousand people contributed. The Charter has been formally endorsed by thousands of organizations, including UNESCO, IUCN and World Conservation Union.¹⁹
37. In 2009 the General Assembly of the United Nations named 22 April as 'Mother Earth Day' under Resolution A/RES/63/278. The Resolution recognised that the Earth and its ecosystems are our home and that it is necessary to promote harmony with nature and the Earth. The term 'Mother Earth' reflected the interdependence that exists among human beings, other living species and the planet we all inhabit.²⁰
38. Since 2009, the aim of the General Assembly of the United Nations, in adopting its five resolutions on 'Harmony with Nature', has been to define a found relationship based on a non-anthropocentric relationship with nature. The resolutions contain different perspectives regarding the construction of a new, non-anthropocentric paradigm in which the fundamental basis for right and wrong action concerning the environment is grounded not solely in human concerns.²¹

¹⁹ www.EarthCharter.org

²⁰ <http://pwccc.wordpress.com/programa/>

²¹ <http://www.harmonywithnatureun.org/documents.html>

39. On 22 April 2010, the World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia proposed a Universal Declaration of the Rights of Mother Earth.
40. In 2012, the outcome document of the United Nations Conference on Sustainable Development (2012), entitled 'The future we want' stating "We recognize that planet Earth and its ecosystems are our home and that "Mother Earth" is a common expression in a number of countries and regions, and we note that some countries recognize the rights of nature in the context of the promotion of sustainable development."
41. The UN's International Mother Earth Day promotes a view of the Earth as the entity that sustains all living things found in nature. It honors the Earth as a whole and our place within it.²²
42. On 22 April 2013, Mother Earth day, the UN Secretary General said that International Mother Earth Day was a chance to reaffirm our collective responsibility to promote harmony with nature at a time when our planet is under threat from climate change, unsustainable exploitation of natural resources and other man-made problems. When we threaten the planet, we undermine our only home – and our future survival. He urged renewal of the pledges to honour and respect Mother Earth.²³
43. In 2012, At the [IUCN World Conservation Congress](#)²⁴ a Resolution on the Rights of Nature was adopted.²⁵
44. In 2013, at the [second session of the Intergovernmental Platform on Biodiversity and Ecosystems Services \(IPBES\)](#) the [conceptual framework of IPBES](#) was adopted. The knowledge systems of living in Harmony with Nature and Mother Earth are essential elements of such framework.²⁶
45. In October 2013 at the [10th World Wilderness Congress](#)²⁷, a Resolution on the Rights of Nature was adopted.²⁸
46. In June 2014, at the [Commemorative Summit on the 50th Anniversary of the Group of 77 Heads of State and Governments](#)²⁹ adopted [the Declaration of Santa Cruz de la Sierra "Towards a New World Order to Live Well"](#) which included passages on the need to live well in harmony with nature and the rights of nature.³⁰

²² <http://www.un.org/en/events/motherearthday/background.shtml>

²³ <http://www.un.org/en/events/motherearthday/>

²⁴ Jeju, South Korea, 6-15 September 2012

²⁵ WCC-2012-Res-100

²⁶ Antalya, Turkey, 9-14 December 2013

²⁷ (Salamanca, Spain, October 2013),

²⁸ Res-#6

²⁹ Santa Cruz de la Sierra, Bolivia, 14-15 June 2014

³⁰ http://www.harmonywithnatureun.org/content/documents/275yellow_g77%20English.pdf

47. This Directive aims to contribute towards implementing those pledges by recognising the rights of nature as principles that form a fundamental part of the law of the Union.
48. This Directive should apply to the *acquis* of the Union and to all manifestations of nature, whether animate or inanimate, and whether plant, animal or other form of life.
49. Rights of nature should be recognised through rules for regulating legal relationships between society and nature, based on principles of applied ecology and the rights of nature should cover *inter alia* the right to life and to exist; the right to maintain the integrity of living systems and natural processes that sustain them; the right to habitat; the right to naturally evolve and to diversity of life; the right to life sustaining water; the right to life sustaining air; the right to equilibrium; the right to restoration of living systems; and the right to live free from torture or cruel treatment by humanity.
50. Member States should review national laws in the light of the fundamental rights of nature and adapt their laws accordingly.
51. Provision should also be made for the implementation and recognition of the rights of nature by means such as through landscape protection and enhancement.
52. There should be local and regional ecological annual plans (LEAPs) and national ecological annual plans (NEAPs) by Member States, together with the preparation of composite reports by the European Commission.
53. There should be provision for recognition and enforcement of the rights of nature in judicial proceedings, by recognising rights to raise proceedings, defend, enforce and intervene on behalf of nature.
54. Breaches of the rights of nature should give rise to restoration by the person(s) who caused the breach and address the aspect of nature whose rights have been breached.
55. The deliberate, intentional, wilful or reckless disregard or breach of the rights of nature under this Directive should be an offence, punishable by fine or imprisonment.
56. Any physical person, government, or non-governmental organisation should be entitled to act on behalf of nature for the purpose of protecting or defending a right of nature pursuant to this Directive.

57. Where there is no representative to speak for nature, the court should be able to appoint a legally qualified person as amicus curiae to present arguments regarding the implications of the proceedings for nature.
58. Member States should appoint an Ombudsman for the fundamental rights of nature to receive and investigate complaints with respect to breaches of the rights of nature, and to make recommendations and an annual report.
59. The principle of ecological impact tracing should be introduced, involving the investigation, analysis and recording of the impact on nature and ecology of systems and/or methods of production, whether involving the provision of goods or services and including patterns of consumption.
60. The Commission should lay down guidance on implementing ecological impact tracing.
61. Member States should prepare reports on the implementation of this Directive every three years and forward them to the Commission which should make a composite report to the European Parliament and the Council.
62. (Comitology recital to be inserted in the up to date version)
63. Member States should communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

HAVE ADOPTED THIS DIRECTIVE:

Part 1
General Scope

Article 1
Scope

1. This Directive provides for the substantive and procedural rights of nature, the rights of people in relation to nature, establishing a duty of care, protection and enforcement and ecological governance.

Article 2
Application

1. This Directive applies to the acquis of the Union which shall be read and interpreted in the light of the provisions of this Directive.

2. It recognises fundamental rights of nature and sets out rules for regulating legal relationships in Member States between human society and nature based on applied ecology.
3. It requires Member States to review national laws in the light of the rights of nature.
4. It makes provision for the defence of rights of nature through landscape protection and improvement.
5. It makes provisions for recognition and enforcement of fundamental rights of nature in judicial proceedings.
6. It provides for local and regional ecological annual plans (LEAPs) and national ecological annual plans (NEAPs) by Member States and the preparation of composite reports by the Commission.
7. It makes provision for ecological impact tracing in the production of goods and services.
8. It makes provision to develop procedures and create adequate public or private institutions that guarantee that nature is allowed to continue its natural cycles and vital processes, and ensure that those responsible for the evaluation processes set out in this Directive are independent of individuals or private or public institutions that develop the activities or products being evaluated.
9. It makes provision for public enquiries and for the development of adequate means to guarantee that man and other forms of life are granted full and prompt restoration of the conditions that reinstate their integrity and the functioning of their vital cycles, whenever these conditions have been jeopardized.

Article 3 Definitions

For the purposes of this Directive,

‘amicus curiae’ means a legally qualified person appointed by a court or tribunal in order to represent interests of nature.

‘diversity’ means the preservation of the differentiation and variety of nature free from any artificial genetic or structural modification or disruption that threatens its integrity, existence, functioning or future potential.

‘Earth’ is a dynamic living system comprising an indivisible community of all living systems and living organisms, interrelated, interdependent and complementary, which share a common destiny.

‘ecological governance’ is a system of governance that embeds the rights of nature in all levels of decision-making and action, from the personal to the global.

‘ecological impact tracing’ means the investigation, analysis and recording of the impact on nature and ecology of a system or method of production, whether involving the provision of goods or services, and including patterns of consumption and use;

‘equilibrium’ means the maintenance or restoration of the interrelation, interdependence, ability to complement and functionality of the constituent components of nature, in a balanced manner for the continuation of its natural cycles and the renewal of its vital processes.

‘ecosystem’ is a community of living organisms in conjunction with the physical components of their environment interacting as a living system defined by the network of interactions among organisms, and between organisms and their environment including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as naturally occurring habitats that sustain inter alia humans, wildlife, flora and fauna, and soil-dwelling or aquatic organisms.

‘government’ includes local, regional, member state and EU levels of government.

“living systems” are complex and dynamic communities of plants, animals, microorganisms and other beings and their environment, where human communities and the rest of nature interact as a functional unit under the influence of climatic, physiographic, and geological factors.

‘natural world’ means the total ecological environment of which human beings and our societies form part;

‘restoration’ is the effective and timely restoration of nature that is or has been damaged by directly or indirectly through action or failure to take action by human beings and their agents.

‘natural communities’ shall mean wildlife, flora, fauna, soil-dwelling and aquatic organisms, as well as human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within an ecosystem.

‘nature’ and ‘natural systems’ for purposes of this Directive, shall include, but not be limited to the earth, ecosystems, natural communities, species, and the atmospheric climate.

‘non-governmental organisation’ includes any statutory body or agency, non-profit organisation or voluntary body whether having legal personality or not.

'water cycle' means the cycle of processes by which water circulates between the earth's oceans, atmosphere, and land, involving precipitation as rain and snow, drainage in streams and rivers, and return to the atmosphere by evaporation and transpiration.

Part II
The Rights of Nature

Article 4
Substantive Rights of Nature

1. Nature shall have legal personality, be recognised as having fundamental rights that arise from its inherent dignity as the source of life and those rights shall be respected, applied and protected by the law of the Union and the laws of the Member States.
2. The substantive rights of nature recognised in this Directive are collective and include but are not limited to:
 - a. the right to life and to exist;
 - b. the right to maintain the integrity of its natural cycles and the vital processes that sustain them, and the capacities and conditions for regeneration
 - c. the right to habitat;
 - d. the right to naturally evolve and to preserve the diversity of life including the differentiation and variety of beings comprising nature,
 - e. the right to preservation of the functionality of the water cycle and its existence in the quantity and quality needed to sustain life; and
 - f. the right to timely and effective restoration.
3. Acknowledging that the above rights of nature are a necessary prerequisite to a healthy environment each person of the European Union, present and future, possesses a fundamental right to a healthy environment.
4. Any conflict between the rights of nature and the rights of any other physical or legal person must be resolved in a way that maintains the integrity, balance, health and equilibrium of nature as a whole as nature is the foundation of life.
5. Legal persons shall not enjoy any special rights or privileges that subordinate the rights of physical people and nature.

6. On the basis of developments in environmental damage within the EU the Council may adopt a decision identifying other rights of nature.
7. For the avoidance of doubt, the EU Environment Agency shall create a scientific definition of the components of nature as described in this Directive which shall be applied by all Member States in their implementing legislation.
8. The policies, activities and laws of the Union shall be interpreted and applied having regard to the rights of nature recognised under this Directive.

Article 5 Procedural Rights of Nature

1. Nature possesses a fundamental right to the defence, protection, and enforcement of its rights under this Directive by any physical person acting individually or collectively, government, or non-governmental organisation of the European Union.
2. Residents of the European Union, individually and collectively, possess a fundamental right to defend, protect, and enforce the rights of nature, and to have their governments defend, protect, and enforce these rights.
3. Entitlement to act pursuant to paragraph (2) implies inter alia the right to raise proceedings, the right to defend proceedings, the right to intervene in pending proceedings, and the right to make representations on behalf of nature in enquiries or investigations.
4. A representative for nature will be appointed in accordance with Article 10 (Amicus Curiae).

Article 6 Duty of Care

1. In recognition that without nature human life cannot exist and therefore we have a fundamental relationship with nature, all physical persons individually or collectively, governments, legal persons or any other entity and have a legal duty of care towards nature and shall act accordingly to ensure that the pursuit of human well-being contributes to the well-being of nature, now and in the future.

Part III Protection and enforcement of the rights of nature

Article 7 Offence

1. The deliberate, intentional, wilful or reckless disregard or breach of the substantive and procedural rights of nature under this Directive shall be an offence.
2. Offences shall be punishable by fine or imprisonment.
3. Punishment may include action by convicted persons to physically restore the damaged aspect of nature according to conditions laid down by national law.
4. The Member States shall determine the detailed arrangements to give effect to this Article.
5. For the purposes of this Directive, where a breach or offence takes place caused by a legal person or other non-physical entity, whether or not having legal personality, the physical persons having power of control and direction shall be considered as responsible jointly and severally.

Article 8 Standing and Costs

1. Any physical person acting individually or collectively, government, or non-governmental organisation shall have the legal standing to act on behalf of nature for the purpose of protecting, defending or enforcing the rights of nature pursuant to this Directive, regardless of any property relationship to nature. This shall include enforcement against potential or ongoing violations of the rights set out in this Directive.
2. The procedures referred to in paragraph (2) shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.
3. No costs shall accrue to any person, organisation or government agency when initiating proceedings to protect the rights of nature pursuant to the provisions of this Directive; costs shall only apply when the person, organisation or government agency fails to establish on the balance of probabilities that there exists a prima facie case pursuant to the provisions of this Directive.
4. Any action brought by either a resident of the European Union or government entity to defend, protect, or enforce the rights of nature secured by this Directive shall bring that

action in the name of that natural system in a court possessing jurisdiction over activities occurring within the European Union or proper Member State.

Article 9 Compensation and restoration

1. Breaches of the rights of nature shall give rise to compensation or restoration by the person(s) who caused the breach which shall be specifically addressed to restore the aspect of nature that has been harmed.
2. Subject to paragraph 3, the compensation or restoration shall be proportional to the harm or loss caused and in accordance with the balance of natural ecology of the ecosystem concerned.
3. Compensation shall take the form of restoration of the entire ecosystem that has been harmed and shall take into account the time required to recreate ancient ecosystems or monetary compensation in accordance with paragraph 4.
4. Monetary compensation shall be measured by the cost of restoring the natural system to its state before the injury, and shall be paid to a court-designated trustee to be used exclusively for the restoration of that natural system.
5. General guidelines on the restoration of ecological systems shall be laid down by the Commission.

Article 10 Amicus curiae

1. In any proceedings involving an aspect of nature within the meaning of this Directive, the court may appoint a legally qualified person as amicus curiae to present arguments regarding the implications of the proceedings for nature.
2. The costs of the amicus curiae shall be borne by the parties to the proceedings, subject to the provisions of Article 8.4

Article 11 Courts and Tribunals

1. Due to the complexity and inter-relatedness of environmental issues, Member States shall ensure that all judicial officers receive adequate training in environmental issues to integrate the provisions of this Directive fully into the court system.

2. Member States may additionally establish specialist environmental courts or tribunals to deal with cases specifically relating to the rights of nature.
3. Courts with jurisdiction, including any specialist environmental court or tribunal, shall take into account the use of inter alia the following tools:
 - a. problem solving approaches such as restorative justice and enforceable undertakings that involve all the stakeholders, including a representative for nature, mutually discussing the nature of the offence and suitable remedies, as a prosecution alternative, and which are aimed at repairing the harm at a substantive level;
 - b. alternative sentencing mechanisms which involve the compulsory contribution of offenders to an environmental project, that requires restoration of nature;
 - c. using criminal sanctions strategically and in proportion to the nature of the offence, including the use of imprisonment, in particular where restoration of nature is not possible;
 - d. civil penalties for less serious violations, which ensure timely and efficient application of sanctions appropriate to the nature of the offence;
 - e. imposition of stricter liability regimes in the case of prosecuting large corporate bodies or other legal persons;
 - f. piercing of the corporate veil and ensuring that officers and shareholders of legal persons are also held liable for offences; and
4. Member States shall ensure that there is adequate:
 - a. access to justice;
 - b. access to proceedings which are fair, efficient, and affordable for all; and
 - c. access to enforcement tools and remedies that can carry out the court or tribunal's decision and provide measurable outcomes for preventing or remedying harm.

Article 12 Enforcement

Further measures for enforcing the rights under this Directive shall be the subject of implementing measures by the European Commission.

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Part IV
Ecological Governance

Article 13
Protection of the Rights of Nature through Ecological Governance

1. Member States shall adapt their national laws so as to protect, defend and enforce the rights of nature addressed in this Directive.
2. To assist in the fulfilment of the obligations under this Directive, Member States shall undertake a review of national law in accordance with Article 14.
3. The aim of the review shall be to identify those factors which enhance ecological governance in support of the rights of nature.
4. Member States shall adapt national law so as to ensure that activities that violate the rights of nature are prohibited.

Article 14
Review of national law

1. Member States shall review their laws with respect to the degree to which they are in conformity with the provisions of this Directive.
2. For the purposes of paragraph 1, Member States shall make use inter alia of the following indicators:
 - a. extent to which mutually-enhancing relations to promote the wellbeing of the nature have been implemented,
 - b. degree to which there is local community involvement in ecological governance,
 - c. extent to which there has been legal recognition of the inter-connectedness between members and components of nature,
 - d. extent to which there exist conflict-resolution mechanisms and processes for harmonising human and nature interests,
 - e. extent to which there exist restorative mechanisms and processes to establish, or re-establish, mutually enhancing relations for the well-being of nature,
 - f. extent to which there exist adaptive mechanisms and processes in the light of evolving challenges.

3. With respect to paragraph 2(c), the following additional sub-indicators apply:
 - a. extent to which nature's interests are represented in ecological governance;
 - b. degree of implementation of the following rights of public participation:
 - i. access to information,
 - ii. public participation in decision-making,
 - iii. rights of access to justice;
 - c. degree of respect for traditional knowledge that help us to live sustainably on the earth, equitable access and benefit-sharing, community land rights, co-management, self-determination and participatory democracy.
4. Member States shall make a report to the European Commission on the review pursuant to this Article before [1 January 2018].

Article 15

Duty to Upgrade and Restore Landscape

1. In order to give practical effect to the recognition of rights of nature through ecological management, Member States shall assess their national territory according to its ecological contexts in accordance with this Article.

1. All land, water, air and other forms of nature comprising landscape shall be classified into levels according to the degree to which they are pristine, wild, rural or mixed with human activity, urban, industrial, seriously polluted or otherwise unfit for use, as follows:
 - a. level one: pristine landscape untouched by human society;
 - b. level two: wild landscape, hardly touched by human society;
 - c. level three: rural landscape, where man has interacted with nature for the purposes of agriculture, forestry, fish farming, etc in accordance with traditional practices;
 - d. level four: rural landscape subject to intensive industrial, monoculture or other nontraditional agriculture, forestry or fish farming, etc;
 - e. level five: urban landscape, mainly for habitation and light commerce and industry;

- f. level six: industrial landscape, set aside primarily for heavy industry or large-scale plant;
 - g. level seven: landscape that is seriously degraded, polluted and where normal agricultural, forestry, fish farming or human dwellings are rendered impossible, impractical or seriously detrimental to health.
1. Particular obligations and duties shall be applied according to the level of classification as set out in the Annex (Landscape Classifications).
 2. In application of this Article, ecological conservation principles shall be observed, including inter alia the following:
 - a. protection of species and species' subdivisions conserve genetic diversity,
 - b. maintaining habitat is fundamental to conserving species,
 - c. large areas usually contain more species than smaller areas with similar habitat,
 - d. all things are connected but the nature and strength of those connections vary,
 - e. disturbances shape the characteristics of populations, communities, and ecosystems, climate influences terrestrial, freshwater and marine ecosystems.

Article 16

Local and National Ecological Action Plans

1. The rights of nature shall be identified at national and local level within plans in accordance with this Article.
2. Regional and local authorities shall prepare annual ecological action plans (hereinafter 'LEAPs) in which they set out:
 - a. the actions they have taken to enhance and protect the rights of nature pursuant to this Directive within the previous year with respect to the landscapes for which they have responsibility; and
 - b. the actions they propose to take in the following year to enhance and promote those rights.

3. The LEAPs shall be submitted to the competent authority of the Member State which shall summarise them in a national ecological plan (NEAP) which shall be submitted to the Commission.
4. The Commission shall prepare a composite report and submit it to the European Parliament and the Council.
5. The LEAPs, NEAPs and Commission composite report shall be rendered public on a website to be established by the Commission.

Article 17
Aids and subsidies harming nature

Member States shall review and phase out all aids and subsidies that encourage activities contrary to this Directive.

Part V
Ombudsman

Article 18
Ombudsman

1. Member States shall appoint an Ombudsman for the rights of nature or extend the role of an existing Ombudsman.
2. The task of the Ombudsman shall be to receive and investigate complaints with respect to breaches of the rights of nature.
3. The Ombudsman shall make annual reports and may make recommendations which may cover any aspect of nature or the relationship between humans, society and nature.
4. Detailed arrangements to implement this Article shall be laid down by the Member States in consultation with European Commission.

Part VI
Ecological impact

Article 19
Ecological impact tracing

1. In order to enhance awareness of the ecological impact of the activities of human beings and their agents and creating awareness of the rights of nature, this Article shall apply.

2. The principle of ecological impact tracing of products, goods and services shall be introduced. This entails the investigation, analysis and recording of the impact on nature and ecology by physical and legal persons and other entities of the systems and/or methods of production adopted, whether involving the provision of products, goods or services, and including transport, consumption and use.

3. Detailed guidance on implementing this Article shall be laid down by the European Commission, acting in accordance with Article 22.

4. Member States shall arrange for ecological tracing under this Article to be subject to supervision by independent bodies.

Part VII Rights of nature award

Article 20 Award for furtherance of Rights of Nature

1. Each year the Commission shall select a locality, person or entity that has done the most to protect and enhance the rights of nature and award it a prize.

2. The detailed arrangements of this Article shall be laid down by the Commission by implementing regulation.

3. Article 22 shall apply.

Part VIII Final provisions

Article 21 Reports

1. Member States shall forward to the Commission every three years, starting from [January 2018], a report on the implementation of national provisions taken under this Directive.

2. The Commission shall prepare every three years a composite report based on the reports referred to in paragraph 1. The part of the report concerning information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.

Article 22 Comitology

1. The Commission shall be assisted by the (Rights of Nature Committee).
2. Where reference is made to this paragraph, Articles of Decision shall apply, having regard to the provisions of Article thereof.

Article 23

Notification of national law provisions

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 24

Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

It shall apply from [.]

Article 25

Addressees

This Directive is addressed to the Member States.

Done at,

[For the European Parliament

The President]

[For the Council of the European Union

The President]

ANNEX

Landscape classifications

1. level one: pristine landscape untouched by man
 - a. general duty to maintain and conserve intact

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- b. obligation to avoid reduction or fragmentation
 - c. desirable to expand and to link up fragmented sites
 - d. obligation to avoid pollution by air, water, land, soil, etc.
2. level two: wild landscape, hardly touched by man:
- a. general duty to maintain and conserve
 - b. obligation to avoid reduction or fragmentation
 - c. desirable to expand and to link up fragmented sites
 - d. obligation to avoid pollution by air, water, land, soil, etc.
3. level three: rural landscape, where man has interacted with nature for the purposes of agriculture, forestry, fish farming, etc in accordance with traditional practices:
- a. general duty to maintain and conserve
 - b. obligation to avoid reduction or fragmentation
 - c. maintain mix of agriculture and forestry, and/or traditional fisheries, where appropriate
 - d. manage ecologically
 - e. restore species, rewild, enhance biodiversity, having regard to human/nature balances
 - f. minimise toxic chemicals and pollution to soil, water, air, etc.
 - g. obligation to reduce pollution by air, water, land, soil, etc.
4. level four: rural landscape subject to intensive industrial, monoculture or other non-traditional agriculture, forestry or fish farming, etc:
- a. maintain mix of agriculture and forestry, and/or traditional fisheries, where appropriate
 - b. manage ecologically
 - c. restore species, rewild, enhance biodiversity, having regard to human/nature balances.

- d. where appropriate move towards level three
 - e. obligation to reduce pollution by air, water, land, soil, etc.
5. level five: urban landscape, mainly for habitation and light commerce and industry:
- a. manage ecologically
 - b. restore species, rewild, enhance biodiversity, having regard to human/nature balances
 - c. encourage creation of wild or natural spaces, planting insect-favouring plants, **reducing**
 - d. **reducing** the use of toxins, poisons and polluting substances
 - e. obligation to reduce pollution by air, water, land, soil, etc.
6. level six: industrial landscape, set aside primarily for heavy industry or large-scale plant:
- a. manage ecologically
 - b. restore species, rewild, enhance biodiversity, having regard to human/nature balances
 - c. encourage creation of wild or natural spaces, planting insect-favouring plants,
 - d. **reducing**
the use of toxins, poisons and polluting substances
 - e. obligation to reduce pollution by air, water, land, soil, etc.
7. level seven: landscape that is seriously degraded, polluted and where normal agricultural, forestry, fish farming or human dwellings are rendered impossible, impractical or seriously detrimental to health:
- a. manage ecologically
 - b. restore species, rewild, enhance biodiversity, having regard to human/nature balances
 - c. encourage creation of wild or natural spaces, planting insect-favouring plants
 - d. **reducing**
 - e. **reducing**
the use of toxins, poisons and polluting substances
 - f. obligation to reduce pollution by air, water, land, soil, etc.
-

Notes on the draft EU legal act on rights of nature

Introduction:

The EU treaties indicate the types of legislative acts that may be made and the procedure followed. The Treaty on the functioning of the European Union lists five types: regulation, directive, decision, recommendation and opinion. For a definition of each see Article 288 TFEU. The choice proposed here is a 'directive'.

The contents of the draft act must come within the scope of the EU treaties (competence). That places limitations that influence the contents and the choice of language. The structure of EU legislative acts is indicated in guidance:

1) Interinstitutional agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (1999/C 73/01)

http://www.cvce.eu/obj/interinstitutional_agreement_on_the_quality_of_drafting_of_community_legislation_22_december_1998-en-d539ade9-5b92-44e0-9e90-f915dc5f95f9.html

2) Joint Practical Guide for the drafting of Community legislation (for persons involved in the drafting of legislation within the EU institutions)

<http://www.eesc.europa.eu/?i=portal.en.self-and-co-regulation-literature.3252>

3) Interinstitutional Style Guide <http://publications.europa.eu/code/en/en-000100.htm>

4) Council Manual of Precedents

<http://eur-lex.europa.eu/techleg/lidoc.html>

The guidance is the same for all languages and the act may be drafted in any of the 24 EU languages and translated. Here it is in English.
