

No Net Loss of Biodiversity public consultation

Summary overview of the responses

On the 6 June 2014, the Commission launched an internet consultation on the EU No Net Loss initiative. The consultation asked interested citizens, public authorities, business and NGOs for their views on a future No Net Loss Initiative at EU level. Ideas and comments were welcome on how to develop the policy, the scope and the scale of the initiative; which drivers of biodiversity loss and which economic sectors to include; how to tackle the challenges related to offsetting and the choice of policy instruments to use. The consultation was closed on the 17 October. The Commission received 723 replies.

Summary of the Results

The summary statistics accompanying this note are based on the “closed questions” which were included in the questionnaire. However, the questionnaire also provided for “free text” responses where respondents could explain their answers/positions. In preparing the present summary the material appearing in these “free-text” fields has also been taken into account.

Respondents

The answers received were from all EU Member States, with the exception of Croatia, Lithuania and Slovakia. Almost half of the responses came from respondents in France and Germany.

The responses from individuals were in majority, followed by NGOs and then companies and business associations. However, it is important to note that those answering as individuals often were associated with an interest group. For example, many answers came on behalf of hunters and most of these were registered as individuals. For the group NGOs, the environmental NGOs were clearly in majority, though other civil society groups were also represented, such as local forestry and woodland interests or local community groups. In the business group, large companies and business associations dominated. Under the group "governments", there were national, regional and local respondents.

Scope of the NNL initiative

A majority of the respondents did not agree with the suggestion of focussing a future initiative on land-use change and diffuse pollution. Many of the respondents argued in favour of a wider scope encompassing all the major drivers of biodiversity loss including in particular, climate change.

A large majority felt that agriculture, forestry, fisheries and aquaculture were priority sectors for inclusion in a future initiative. There were also calls for the scope to cover all economic sectors in order to include all pressures on biodiversity.

A significant majority of respondents was of the opinion that a NNL initiative should focus only on territories outside Natura 2000 areas.

A large majority felt that the NNL initiative should cover the terrestrial and marine environment from the start.

Mitigation hierarchy

There was a strong agreement that respecting the principles of the mitigation hierarchy was essential for achieving the objective of No Net Loss.

Offsetting

On offsetting, slightly over half of the respondents were positive to the inclusion of offsetting/compensation measures in a future EU initiative on No Net Loss. However, for about 70% of those responding positively, such support was conditional on strict measures and robust safeguards being in place to avoid abuses. Some of the respondents that were, in principle, supportive of offsetting/compensation, expressed concerns regarding the capacity of national and local administrations to ensure proper implementation.

Policy options

In order to achieve No Net Loss, most respondents saw an added value in implementing existing legislation better, but there was caution in re-opening legislation such as the Environmental Impact Assessment Regulation (EIA), the Strategic Environmental Assessment regulation (SEA), the EU Forestry Strategy and the Common Agriculture Policy (CAP) to ensure no net loss. Many respondents supported the biodiversity proofing of the EU budget. A majority was against developing an EU level legal framework for compensation/offsetting. However, the development of a voluntary framework including technical guidance and benchmarking of good practice did attract majority support.

Technical measures related to offsetting/compensation

Given that a significant number of respondents were against the inclusion of offsetting/compensation in any future EU No Net Loss initiative and that the majority of respondents were against a binding EU legislation on offsetting/compensation, the responses to the more detailed technical questions linked to offsetting/compensation should be treated with caution. Indeed, many respondents indicated that since they did not support offsetting in this context, they found the questions on the design of offsetting schemes to be inappropriate and/or too technical and detailed. What can be understood from the answers is the importance of issues such as additionality, securing offsets over time, robust metrics and strict monitoring and enforcement.

Some sector specific answers are reported in the **sector analysis** below.

Responses by Sector/Group

Environmental NGOs

Many from the environmental NGOs wanted a wider scope where all drivers of biodiversity loss are addressed, including climate change, air pollution and diffuse pollution. Many among this group of respondents considered that every economic sector with an impact on biodiversity should be included within the scope of a future initiative with a majority identifying the agriculture and forestry sectors as priorities. A small minority was against the concept of NNL altogether arguing that such an approach started from an acceptance that continued losses were inevitable.

The majority of the respondents in this group felt that the Birds and Habitats Directives provided a good framework for protecting threatened or rare species. A large majority was in favour of concentrating the NNL initiative on areas outside Natura 2000.

The environmental NGOs were all in favour of the mitigation hierarchy and a stricter implementation and application of it. However, the majority were against the inclusion of offsetting in the NNL initiative arguing that it was a “licence to trash”, that it would be “abused”, that the political timing was not right, that it was too complex and that the institutional capacity to implement and monitor such an approach was not available in the majority of Member States. Even those NGOs that were supportive of doing something in relation to offsetting were very pessimistic about the capacity of the Member States to ensure the necessary monitoring and control. Many were against offsetting as a principle, evoking the irreplaceability and the inherent value of biodiversity and ecosystem services.

In general the NGOs were not in favour of mandatory offsetting or dedicated EU legislation on offsetting. There was strong support for biodiversity proofing of the EU budget. Most were against the review/revision of existing legislation although many supported the idea of improved implementation of existing legislation. For many, if an EU initiative on NNL were to take place it should be in the form of a Communication establishing principles, facilitating best practice and committing the EU to deliver NNL in its own policies.

In terms of the technical issues linked to offsetting the responses were quite diverse but there was a tendency towards the most cautious approaches. Several NGOs indicated that they missed being consulted on whether an NNL initiative was necessary at all. If offsets were to be allowed, like-for-like was preferred and the majority was against fees in lieu and the pooling of offsets.

Other NGOs

Most of the other NGOs represented local forestry and woodland interests. They consider that the case for an NNL initiative has not been proven. They hold the view that forestry and agriculture are not important drivers of biodiversity loss. They do not support the inclusion of the mitigation hierarchy or the inclusion of offsetting in any future NNL initiative. This group also questions the utility of EU level instruments, being of the opinion that we should rely more on national/local/individual initiatives to protect the biodiversity.

Companies and Business Associations

Many from the business community questioned the added-value of a NNL initiative. Concerning the scope, the sectors identified in the questionnaire mainly felt they were unjustly identified as drivers of biodiversity loss. They claimed the scope should include all or none of the economic sectors. Many argued that sectors that already are regulated via EU or national legislation should be excluded from any further regulation. Most were against including diffuse pollution, but would suggest adding climate change.

There was a strong focus on subsidiarity and a strong insistence that most sectors are already heavily regulated. They also questioned the cost of a NNL initiative and in particular the burden of the additional costs associated with a strict application of the mitigation hierarchy and the implementation of an offsetting programme. Applying the polluter pays principle, these costs would

fall on the developer, which was considered a barrier to economic development. In addition, many felt there would be additional administrative costs and a fear for more red-tape and bureaucracy.

Many in the business community were positive to offsetting as a principle, mainly at the national level, but they saw little scope for an EU level scheme, particularly not a legislative framework. Several pointed to the fact that Member States already have difficulties coping with the burden of existing legislation and that the answer to the problem was not to add more legislation but to ensure that the existing legislation is implemented effectively. Many suggested that the EU NNL initiative should take the form of a Communication focusing on better implementation of existing legislation, the promotion of offsetting pilot schemes and the exchange of best practise.

The definitions used in the questionnaire and in the study underpinning the NNL initiative were frequently questioned by the business community. They required better definitions of "over-exploitation of natural resources", "pollution" and "land-use change". They also asked for the socio-economic factors and implications to be better analysed and included in an eventual NNL initiative.

On the technical measures linked to offsets, many of the business community would not agree to the requirement of having offsets in place before the development project takes place, since the time factor was considered a serious obstacle for economic development. Many were in favour of using fees in lieu as well as allowing for offsets to take place in Natura 2000 areas.

Agriculture and forestry

The agriculture and forestry sectors' comments corresponded to a large extent with the business community's. They were mainly against an NNL initiative, since they considered that the industry would lose possible arable land twice: once through a development taking place and secondly by a compensation measure taking place on potentially productive land.

Concerning the scope of the NNL initiative, the agriculture and forestry sectors argued that they have little impact on biodiversity and that soil sealing, linked to urban development and infrastructure is the main driver of biodiversity loss. In addition, it is argued that the agriculture sector is heavily controlled via the CAP and should therefore be excluded from any new legal constraints.

The agriculture sector strongly opposed including diffuse pollution into the NNL initiative.

The mitigation hierarchy was considered important, but already implemented in a sufficient way via the EIA and the SEA regulations and the Bird and Habitats directives.

The subsidiarity principle was emphasized. There was a rejection of any EU legislative framework on offsetting. Many also expressed concerns that the land use planning would be affected by a NNL initiative, and that would be outside EU competences. However, the EU could play a role in promoting voluntary national/regional offsetting schemes and facilitating the exchange of best practise.

Many indicated that the NNL concept is a new one and that there is lack of analysis of potential costs or added-value.

Hunters (France)

Over 100 responses were received from hunters in France. Approximately 2/3 of these responses were from individuals and 1/3 from hunting associations. With a few exceptions these responses followed the same pattern - against the choice of scope/drivers; against the NNL initiative being focussed outside Natura 2000; to regard all sectors as important in relation to biodiversity loss; to insist that hunters be better treated and be involved in the discussions and decision making; to support the concept of the mitigation hierarchy; to be against inclusion of offsetting in the NNL initiative and to be against any measures or actions.

Hunters (Others)

Other hunters associations representing regional, national or EU level positions were generally supportive of the need for a No Net Loss initiative, a focus outside the Natura 2000 network and the inclusion of offsetting in a future initiative on NNL. Emphasis was placed on the need to involve local actors and in particular hunters. These groups were not supportive of new legislation at the level of the EU but underlined the need to ensure effective implementation of the legislation and policies already in place.

Other organizations

The national, regional and local governments/administrations/agencies that replied were generally supportive of the analysis, while recognizing the political, legal and technical challenges. There were recommendations to proceed with caution, considering the lack of capacity, (human and financial), in the administrations. There was a concern that additionality would be difficult to ensure, considering that many Member States have a lack of available land. Answers from academia and research raised the difficulties with metrics, how to value biodiversity and ecosystem services and the experiences made in other schemes internationally.

Individuals

This group offered a wide diversity. Many were concerned citizens expressing their worry over continuous loss of biodiversity. The majority wanted an enlarged scope of the NNL initiative, including all policies and all economic sectors. Most were in favour of a strict application of the mitigation hierarchy and improved implementation of existing legislation. Offsetting was in many cases considered as a positive principle, but many still expressed doubts of how it would be implemented (corruption, licence to trash, lack of resources for enforcement etc.). Others considered offsetting an unacceptable concept, with the reference to the irreplaceability of biodiversity. Many expressed a "regulation fatigue" and did not see the interest of any EU legislation on NNL. A minority asked for EU legislation on compensation/offsetting in order for biodiversity to be protected in a coherent way across Member States. Many respondents felt the questionnaire to be far too technical and detailed.