

# Friends of the Earth Europe response to the European Commission Public Consultation on the future EU Initiative on No Net Loss of Biodiversity and Ecosystem Services



**Friends of  
the Earth  
Europe**

This document sets out recommendations for responding to the European Commission's consultation on its No Net Loss of Biodiversity and Ecosystem Services – which would include provisions for biodiversity offsetting.

The consultation is open until October 17 and [can be found here](#).

## ***2. Scope and Objectives of the future EU No Net Loss initiative.***

**2.1. The future EU initiative on No Net Loss will cover the following causes of biodiversity loss: land-use change, over-exploitation of natural resources and diffuse pollution to water and soil.\***

 (compulsory)

- I agree strongly
- I agree
- Neutral
- I disagree
- I disagree strongly
- No opinion

**2.2. You are invited to explain your answer to the previous question. (optional)**

If we want to achieve No Net Loss (NNL) of biodiversity, we must address ALL drivers of biodiversity loss. This scope is too limited, excluding drivers such as e.g. climate change.

**2.3. The future EU initiative on No Net Loss will focus on territory outside the Natura 2000 network.**

\*  (compulsory)

- I agree strongly
- I agree
- neutral
- I disagree
- I disagree strongly
- No opinion.

**2.4. You are invited to explain your answer to the previous question. (optional)**

The Natura 2000 directives fulfil their intention very well and have strict legislation for dealing with possible impacts. These directives must not be touched. Any NNL mechanism must focus on filling implementation gaps of existing legislation and/or be additional to the Bird and Habitats directive. We agree on this with the EU Parliament (A7-0101/2012), No. 54. The IEEP report clearly states that the main need of the BHD is better implementation, but not change (e.g. Chapter 7.2.2).

**2.5. Do you think that the future EU initiative on No Net Loss should, in the first instance, cover the terrestrial environment and subsequently be extended to cover the marine environment, or should the initiative cover, from the start, both the terrestrial and the marine environment?**

\*  (compulsory)

- The terrestrial environment at first and later the marine environment.
- The terrestrial environment AND the marine environment from the start.

**2.6. What is your opinion concerning the importance of including the following economic sectors within the scope of the future EU NNL initiative?**

There are a number of economic sectors that have a large biodiversity footprint. The questions in this block of the questionnaire are intended to provide feedback concerning the importance of including each of the identified sectors within the scope of the future NNL initiative.

	Very important	Important	Not very important	Not at all important	No opinion
<b>2.6.1. Agriculture* (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.2. Built development (public and private)* 🏡 (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.3. Energy infrastructure* (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.4. Extractive industries* (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.5. Fisheries and aquaculture.* (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.6. Forestry* (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.7. Transport infrastructure* (compulsory)</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>2.6.8. Other sectors (provide details in the question below)* (compulsory)</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**2.7. You are invited to explain your answers to the previous question including the identification of sectors that you had in mind if you indicated that "other sectors" were "very important" or "important". (optional)**

Agriculture and Forestry cover ca. 80% of the EU and are key drivers for Land Use and Biodiversity loss. These need to be addressed if we are to achieve no net loss, preferably by proactive sectoral policies such as the CAP and the CFP – see also our answers to Question 4.1. Other sectors and uses (e.g. pollution from other sources, water use, hunting etc... also need to be considered as they can also have considerable impact on biodiversity.

### **3. The mitigation hierarchy including compensation and offsetting.**

The term 'mitigation hierarchy' refers to a systematic, step-wise intervention logic that is routinely applied in the case of actions that are expected to damage biodiversity and/or ecosystem services. The first step in the sequence is AVOIDANCE-can the damage be avoided e.g. by either not carrying out the action or carrying out the action somewhere else? The next step in the sequence is REDUCTION, and at this stage the emphasis is on reducing the damage as much as possible both at the design stage and during implementation. Once the action has been carried out, in some cases, it may be possible to do RESTORATION work e.g. if an underground pipeline is to be installed, this will cause damage when heavy machinery is brought on site and also when the excavation and construction work takes place. However, when the work is completed and the construction machinery is removed, the site can be restored. Finally, if, despite all best efforts to avoid, reduce and restore, there is still residual damage, this damage should be compensated/offset.

In summary the mitigation hierarchy includes the following steps:

AVOIDANCE -> REDUCTION -> RESTORATION -> COMPENSATION/OFFSETTING

The steps in the hierarchy should be addressed in sequence and steps should not be omitted.

**3.1. What is your opinion concerning the following statement- 'the correct application of the mitigation hierarchy is essential if No Net Loss of biodiversity and ecosystem services is to be achieved'**

\*  (compulsory)

- I agree strongly
- I agree
- Neutral
- I disagree
- I disagree strongly
- No opinion.

**3.2. Some stakeholders, while supporting the mitigation hierarchy in principle, are concerned that in practice the steps in the sequence will not be respected and that efforts to avoid, reduce and restore will be put aside in favour of compensation/offsetting.**

**In your opinion, should the future EU initiative on No Net Loss of biodiversity and ecosystem services, address compensation/offsetting OR should this be excluded.\*  (compulsory)**

- The future EU initiative should include compensation/offsetting.
- The future EU initiative should not include compensation/offsetting.**
- The future EU initiative should include compensation/offsetting on condition that strict measures and robust safeguards are in place to avoid abuses.
- No opinion

**3.3. You are invited to provide an explanation of your answer to the previous question. (optional)**

Each part of biodiversity is unique and irreplaceable- For any project that has a significant impact on biodiversity, the first option should be not to implement the project ([see FoEE position, link](#)). Ensuring an overall preservation of biodiversity should be part of national land use planning, not project-by-project compensation, which lowers responsibility for damages done. In any case it is impossible to keep on offsetting continuous growth; structural changes in the planning of the economy are needed.

**3.4. How well do you think the mitigation hierarchy is built into existing EU legislation and policies?**

 **(optional)**

- Very well
- Quite well
- Neutral**
- Not very well
- Not at all well
- No opinion.

**3.5. Please provide an explanation of your response to the previous question. (optional)**

This principle is integrated well into some existing EU legislation, notably the BHD. It is also part of the EIA and SEA directives, but the element of avoidance needs to be considerably strengthened here and go beyond looking at least detrimental alternatives. It must also include a check as to whether the interest of the project justifies the destruction of nature at all. I.e. the 'need' for the project must be assessed and it must be deduced whether there is a better option e.g. renewables over fracking.

#### **4. The Future EU Initiative on No Net Loss of Biodiversity and Ecosystem Services**

##### **4.1. THE QUESTIONS INCLUDED IN THE FOLLOWING BLOCK ARE ALL OPTIONAL.**

The report by IEEP on policy options for an EU No Net Loss initiative (chapter 5) identifies over 30 individual measures that could potentially be included in the future EU NNL initiative. Where several measures are closely linked these have been bundled together into a discrete group. There are 11 such groups in the IEEP report.

Please note: i) that measures concerning possible improvements to the implementation of the habitats and birds directives are not included here as these directives are currently the subject of a Fitness check in the context of the Commission's REFIT programme which will itself have a dedicated public consultation procedure; ii) similarly, measures linked to the protection of soil are not included. The Commission has recently withdrawn its proposal for a Directive on soil protection and is currently reviewing the future policy options in this area.

Strongly support the inclusion of this measure as part of the initiative.	Support the inclusion of this measure as part of the initiative.	Neutral	Against the inclusion of this measure as part of the initiative.	Strongly against the inclusion of this measure as part of the initiative.	No opinion.
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**4.1.1. Enhancing the scope and strengthening the implementation of the Environmental Liability Directive. (optional)**

- 4.1.2. Strengthening the EIA Directive and improving its implementation. (optional)
- 4.1.3. Strengthening the SEA Directive and improving its implementation (optional)
- 4.1.4. Improving spatial planning in the terrestrial, coastal and marine environments. (optional)
- 4.1.5. Enhancing the mainstreaming of environmental measures in the CAP so as to better protect semi-natural areas. (optional)
- 4.1.6. Addressing NNL objectives in the context of the EU Forest Strategy. (optional)
- 4.1.7. Biodiversity proofing of the EU budget. (optional)
- 4.1.8. Developing a voluntary EU framework for compensation/ offsetting including technical guidelines and benchmarking good practice. (optional)
- 4.1.9. Developing a legal framework at the EU level for compensation/offsetting including general principles and common standards. (optional)
- 4.1.10. Promoting the use of market instruments to support the NNL objective including a possible "No Net Loss" label. (optional)

4.2.

Can you suggest other measures in addition to those identified in the previous question that would be important to include in the future EU NNL initiative? (optional)

We support the proposed suggestion with the exception of 4.1.8.-4.1.10. Compensation - as a like-for-like making up for unavoidable damage done - may be a 'last resort' for "residual impacts" after other measures have failed, but should be left to member states as even a compensation scheme will only work where the political will exists to do it properly, and some member states do not have that. Offsetting and market mechanisms are door-openers for turning biodiversity into a tradeable commodity which is unacceptable, and a voluntary mechanism will only serve to greenwash in cases where business see clear advantages for themselves. We also suggest including the soil directive, green infrastructure and strategies for sustainable consumption into the NNLi.

**4.3. Policy Options . In the following series of questions we are seeking your opinion on the general character of the future EU initiative on No Net Loss. Below you will find a series of different policy objectives and for each of them you are requested to indicate your views concerning its inclusion in the future EU NNL initiative.**

Essential to be included	Desirable to be included	Neutral	Not desirable to be included	Should not be included	No opinion
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**4.3.1. Take steps to improve the effectiveness of the existing legislation and policies including through better enforcement, increasing awareness and technical guidelines.\* (compulsory)**

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**4.3.2. Reviewing and where appropriate revising existing pieces of environmental legislation to ensure that the principle of No Net Loss of Biodiversity and Ecosystems is respected and that the mitigation hierarchy is properly integrated.\* (compulsory)**

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**4.3.3. Ensure that policies and actions supported by EU funds respect the principle of No Net Loss and apply the mitigation hierarchy appropriately.\* (compulsory)**

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**4.3.4. A framework at EU level to promote the coherent and consistent use of compensation/offsetting, including technical guidance and**

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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benchmarking best practice.

**\* (compulsory)**

**4.3.5. Other measures (see below)**



**(optional)**



**4.4. If, in answering the previous question, you indicated that "other measures" were either "essential to be included" OR "desirable to be included" you are invited to provide further details regarding what those measures are. (optional)**

This needs to look at all drivers of BD loss. Some important examples are: - soil directive; - spatial, target-oriented planning; - check if projects and impacts are publicly desirable or of overriding public interest in the first place; - reducing pressure on nature by reducing individual and overall consumption / land footprint as well as reducing economic growth to reach sustainable levels.

## ***5. Addressing the challenges of compensation/offsetting.***

Compensation/offsetting is the last step in the mitigation hierarchy. For the purposes of the present questionnaire the term "compensation" and the term "offsetting" will be regarded as synonymous and will be understood to mean actions taken to address residual impacts on biodiversity and ecosystem services which remain after the other steps in the mitigation hierarchy have been applied and with the objective of achieving No Net Loss of biodiversity and ecosystem services. Compensation/offsetting is an essential part of the mitigation hierarchy but effective implementation can be very challenging. In this section we seek to get opinions regarding some of the key issues.

**5.1. Compensation/offsetting measures can be carried out at, or in close proximity to, the site where the damage took place. This is so called "on site" compensation/offsetting. In some cases compensation/offsetting is done at another location, away from the site where the damage occurred. This is so called "off-site" compensation/offsetting. We would like to get your opinion regarding "on-site" vs "off-site" compensation/offsetting.**

**\* (compulsory)**



**Compensation/offsetting should always be on-site unless there are exceptional circumstances that would justify another approach.**



Compensation/offsetting on site is always the preferred option but offsite compensation/offsetting can be considered if there is convincing evidence that this would present a

better outcome for biodiversity and ecosystem services.

- The choice of on-site vs offsite compensation/offsetting should be made on a case by case basis with a view to achieving the best outcomes for biodiversity and ecosystem services.
- No opinion

**5.2. Compensation/Offsetting can be designed to replace the biodiversity and the ecosystem services that are lost with the same kind of biodiversity and the same ecosystem services. This type of compensation/offsetting is referred to as "like for like" . In other cases, the biodiversity and/or ecosystem services that are lost, are replaced with biodiversity of a higher value and/or critical/priority ecosystem services although in such cases the area of land dedicated to the compensation/offset may be less than the area of the land where the damage occurred. This type of compensation/offsetting is referred to as "trading up". We would like to get your opinion concerning "like for like" vs "trading up".\*  (compulsory)**

- "Like for like" compensation/offsetting is always to be carried out unless there are exceptional circumstances that would justify another approach.**
- "Like for like" compensation/ offsetting is always the preferred approach but "trading up" can be considered if there is convincing evidence that this would provide a better outcome for biodiversity and ecosystem services.
- The choice of "like for like" compensation/offsetting vs "trading-up" should be made on a case basis with a view to achieving the best outcomes for biodiversity and ecosystem services.
- No opinion.

**5.3. There are a number of issues relating to compensation/ offsetting that can have a significant impact on the success of the compensation/offset in terms of conserving biodiversity and ecosystem services. In the following questions we would like to get your opinion regarding these issues.**

Very important    Important    Neutral    Not important    Not important at all    No opinion

**5.3.1. Making sure that the compensation/offset is additional and that it represents a gain in biodiversity**

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and/or ecosystem services that would not have happened without the compensation/offset. This is known as 'additionality'.\* (compulsory)

5.3.2. Securing the compensation/offset over time and making sure that the compensation/offset is protected and managed appropriately.

     

\* (compulsory)

5.3.3. Putting in place appropriate measures to monitor the compensation/offset and to enforce compliance with the conditions under which the compensation/offset is established.

     

\* (compulsory)

5.3.4. The possibility of using compensation/offsetting measures strategically (e.g. pooling compensation/offsetting obligations linked to several different projects) in the framework of co-ordinated spatial planning in order to optimize the outcomes for biodiversity and ecosystem services.\* (compulsory)

     

5.4. In order to provide compensation/offsets you need to understand what is going to be lost in terms of biodiversity and ecosystem services and you need to assess what will be gained by the compensation/offset. In this way you can make sure that the gain represented by the compensation/offset is at least equivalent to what is going to be lost. In this question we are asking for your opinion on how to assess losses and how to assess the value of the compensation/offset.

\*  (compulsory)

An expert assessment of the losses in terms of biodiversity and ecosystem services and the gains in biodiversity and ecosystem services represented by the compensation/offset.

A standardized assessment using a checklist.

The type of assessment that is appropriate should be determined in a flexible manner taking into account the complexity, the scale and the type of biodiversity and ecosystem services that are likely to be affected.

No opinion.

**5.5. THE QUESTIONS INCLUDED IN THE FOLLOWING BLOCK ARE ALL OPTIONAL.**

The final report of the contract "Policy Options for an EU No Net Loss Initiative" contains a number of recommendations relating to compensation/ offsetting. In the following series of questions we are seeking opinions concerning these recommendations.

I agree strongly    I agree    Neutral    I disagree    I disagree strongly    No opinion.

**5.5.1. There should be a proportionate approach to metrics, with more streamlined procedures and simpler baseline studies and metrics for impacts that are low level, or which only affect widespread biodiversity and non-critical ecosystem services, but detailed, full assessments and metrics for more significant impacts. (optional)**

                  

**5.5.2. Compensation/Offsets should preferably be in place before the impact occurs, but if this is not possible, the issue of time preferences can be integrated into the metrics which are used to discount future benefits. (optional)**

                  

**5.5.3. For non-threatened/common biodiversity, compensation in the form of payments into a trust fund (fee 'in lieu') could be allowed.  (optional)**

                  

**5.5.4. In relation to the location of compensation/offsets which take place off-site, "service areas" could be designated on a bio-geographic basis in which compensation/offsets could be**

implemented. (optional)

**5.5.5. Compensation/Offsets can take quite a lot of time and resources to implement and therefore it may not be appropriate to require compensation/offsetting in cases where the impacts on biodiversity and/or ecosystem services are comparatively trivial and for this reason a threshold could be applied such that impacts below the threshold would not be subject to compensation/offsetting. (optional)**



**5.6. Are there any other issues concerning compensation/offsetting that are not covered by the preceding questions in this section and which you consider should be taken into account? (optional)**

We have missed being consulted on whether an offsetting mechanism - which is obviously what the Commission has in focus for a NNL initiative - will in practice be beneficial and not be used as an excuse or a "license to trash". We have serious concerns about a mechanism that entitles to the destruction of Nature while those destroying do not sufficiently implement the offsetting measures. This applies especially if avoidance is ignored, governance is lacking and the mechanism is market-based. See FoEE letter.

**5.7. Which national (voluntary or mandatory) measures on compensation/offsets are you aware of and how effective are they (excluding national measures transposing the requirements of the Habitats Directive and the Environmental Liability Directive)? (optional)**

**Germany** - fairly effective compensation regulation but not working as well as those of the birds and habitats directives. In most cases, options for avoiding the damaging projects in the first place are not or only very briefly considered. Erosion of regulation, with a tendency to strengthen the far end of BS offsetting (more pooling and payments, no looking at avoidance).

**UK** - Although not even formally adopted as policy in the UK developers are already using biodiversity offsetting to bypass the normal mitigation hierarchy and threaten highly valued habitat including ancient woodland showing the risks inherent in the approach <https://www.foe.co.uk/node/46635>. Already offsetting has been used to facilitate approval for two housing developments that will cause significant harm to sites designated as Sites of Special Scientific Interest including one of the most important remaining sites for nightingales in England <http://www.rspb.org.uk/whatwedo/campaigningfornature/casework/details.aspx?id=tcm:9-317476>

**Australia:** offsetting been in place for a decade. It has not halted biodiversity loss and there is increasing evidence that is facilitating more destruction of biodiversity. The State of the Environment Report for Victoria, published at the end of 2013, concluded that because offset sites tended to be existing protected areas the regulations were leading to an overall loss of native vegetation. Dr Philip

Gibbons of the Australian National University, and one of the Australian government's advisors on offsetting, is concerned that offsetting in the state of Victoria has coincided with an increase in the rate of deforestation. <http://www.theguardian.com/environment/2014/mar/11/owen-paterson-biodiversity-offsetting>

And Environmental lawyers (from the Environmental Defenders Office in Victoria) told a Senate Inquiry that "The intention of biodiversity offsets is preferably to achieve a net gain, or at a minimum a no net loss of biodiversity on the ground. However after a decade of offsetting in Australia there are no studies that show this is what occurs in practice. Indeed, studies indicate the opposite." EDO has found that offsetting has allowed projects to undermine existing biodiversity legislation concluding that offsetting is primarily a tool of "regulatory negotiation to facilitate development".

Due to the serious nature of concerns raised during the inquiry The Senate Committee made 21 recommendations aimed at significantly strengthening offsetting regulations in Australia including proper compliance with the mitigation hierarchy. The situation in Australia illustrates the risks and challenges of making an offsetting mechanism work in practice.

## **6. Closing questions**

### **6.1. Do you have additional comments that you would like to make concerning the development of the No Net Loss initiative? (optional)**

The questionnaire clearly focusses on the design of an offsetting mechanism. There are strong concerns that such a mechanism may be misused as a 'license to trash' rather than a mechanism that will stop biodiversity loss. Risks and flaws include the issue that nature cannot be replaced, neither in and of itself nor in terms of its meaning for people. There is clearly a strong interest on the part of business, the finance sector and governments trying to justify the continuation of business as usual under this label. We would like to see the NNLI look into other options than offsetting much more extensively.

Other additional comments:

- \* The EU needs to consider a real approach tackling the drivers of biodiversity loss.
- \* Avoidance of project itself should be the first step in mitigation hierarchy.
- \* We need to rethink development policies.
- \* Ensuring sufficiently biodiverse sites can depend on general land use planning and should not depend on offsetting.

### **6.2. Do you have any comments you would like to make concerning the consultation and the questionnaire? (optional)**

We would have appreciated a broader approach in the questionnaire that goes beyond exploring the details of biodiversity offsetting and react more to the analysis for the 2010 target's failure (see letter). Also, some questions were too long and contained several messages, some of which we would agree with and others of which we don't (such as 5.5.2.)

### **6.3. Do you accept to be contacted by the Commission in the event that further details concerning your replies would be helpful?\* (compulsory)**

Yes

No