THE IMPACT OF EU NATURE RESTORATION LAW ON PRIVATE PROPERTY RIGHTS – BETWEEN THE ENVIRONMENTAL PROTECTION AND THE (IN)COMPATIBILITY WITH THE ROMAN LEGAL TRADITION

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ABSTRACT

Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 (EU Nature Restoration Law) is the first continent - wide comprehensive law aimed at restoring ecosystems, habitats, and species in the EU. Entering into force on 18 August 2024, the Regulation obliges all Member States to adopt effective restoration measures without delay, with the objective of covering at least 20% of the EU's land and sea areas by 2030, and ensuring that all ecosystems in need of restoration are addressed by 2050. Given that over 80% of Europe's natural habitats are currently in poor condition, the EU Nature Restoration Law introduces legally binding targets that aim to reverse biodiversity loss and improve the ecological integrity of the Union's territory. In order to reach the goals, it is unavoidable that the restoration measures will affect property rights and create a need to supplement existing legal remedies for subjects whose rights will be affected by the restoration measures. As the regulation of property rights—particularly ownership—falls within the exclusive competence of each Member State, the legal and constitutional traditions regarding property vary significantly across the Union. In Croatia, building up on Roman legal tradition, ownership represents a most comprehensive right over an object. As the Nature Restoration Law intervenes in how property may be used, questions arise as to whether the required measures are compatible with the traditional understanding of ownership.

This paper examines the implications of the EU Nature Restoration Law on private property rights, using Croatia as an example. It begins by outlining the definition and core attributes of dominium in Roman law and its reception in Croatian legal doctrine. The analysis then turns

to the key provisions of the EU Nature Restoration Law, highlighting the absence of explicit mechanisms for reconciling ecological objectives with property rights as fundamental rights. Finally, the paper offers conclusions on the significance of nature restoration efforts, thereby underlining the necessity of harmonising environmental goals with the inviolability of private ownership as a cornerstone of modern legal systems.

***Keywords**: EU Nature restoration law, European private law, legal environmental, ownership, protection, Roman law*

1. INTRODUCTION

Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 (hereafter: EU Nature Restoration Law) is the first continent-wide comprehensive law aimed at restoring ecosystems, habitats, and species in the EU. Even before entering into force on 18 August 2024, the public debate on its positive and negative impacts was heated. For instance, in Finland and Sweden, the public had objectively justified concerns about its impact on legal certainty for landowners.[1] Criticism was also voiced in Croatia. Fearing that it will directly jeopardize the already fragile agricultural production and fisheries, the Croatian Chamber of Agriculture advocated to vote against the proposed regulation.[2] On the other hand, nature protection organizations, various NGOs and nature enthusiasts welcomed the EU Nature Restoration Law with a strong emphasis on its positive environmental influence.[3] Lastly, certain authors called for the rational, middle approach to the problem.[4]

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1 Teivainen, A., *Finland will insist on revisions to nature restoration law, rules committee*, web page Helsinki Times, 02 December 2022, [https://www.helsinkitimes.fi/finland/finland-news/politics/22609-finland-will-insist-on-revisions-to-nature-restoration-law-rules-committee.html], Accessed 04 February 2025; Christiansen, C., *Nature Restoration law: Legal certainty for land owners need to be respected,* web page of North Sweden European Office, 12 July 2023, [https://www.northsweden.eu/english/news/2023/nature-restoration-law-legal-certainty-for-land-owners-need-to-be-respected/], Accessed 04 February 2025.

2 The reasoning put forward was that its implementation in Croatia would further reduce the already low level of agricultural productivity and increase the country's dependence on imported agricultural products. This, in turn, could lead to a counterproductive effect by increasing CO_2 emissions due to transport-related pollution, highlighting the issue of insufficient self-sufficiency. *Cf. Agriculture Chamber urges Croatian MEPs to vote against nature restoration bill*, N1, 12 July 2023 [https://n1info.hr/english/news/agriculture-chamber-urges-croatian-meps-to-vote-against-nature-restoration-bill/], Accessed 28 March 2025.

3 *Serious concerns about the Swedish Presidency proposal for the Nature Restoration Law*, Open letter published on the web page of FERN organization, 27 March 2023 [https://www.fern.org/publications-insight/serious-concerns-about-the-swedish-presidency-proposal-for-the-nature-restoration-law/], Accessed 04 February 2025; Erg, B.; Schnell, A.A., *IUCN statement on the EU Nature Restoration Law,* web page International Union for Conservation of Nature, 04 July 2023, [https://iucn.org/iucn-statement/202307/iucn-statement-eu-nature-restoration-law], Accessed 04 February 2025.

4 Leino-Sandberg, P., *Nature Restoration and Fundamental Rights*, web page Verfassungsblog, 17 November 2022, [https://verfassungsblog.de/nature-restoration-and-fundamental-rights/], Accessed 04 February 2025; Kurmayer, N., *Brussels wrestles with potential impacts of EU nature restoration law,* web

As there is no unified or comprehensively regulated concept of property at the European level—nor is one currently foreseen[5]—the effectiveness of implementing the EU Nature Restoration Law will depend largely on the legal frameworks and approaches adopted by individual Member States, which may, in turn, jeopardize the achievement of its objectives. Focusing on the case of Croatia, this article explores the potential impact of the EU Nature Restoration Law on private property rights and assesses its (in)compatibility with the notion of ownership as shaped by the Roman legal tradition.

Methodologically, this paper is grounded in historical-comparative and doctrinal legal research. It opens with an exposition of the nature and essential attributes of the institute of *dominium* in Roman law, examining the intersection between private ownership and the public interest. This is followed by an analysis of the core characteristics and challenges of the Croatian property law system. The second part presents the general framework for the protection of private property within EU law. The third part offers a critical analysis of the practical implications of the relevant provisions of the EU Nature Restoration Law and discusses the (perceived) tensions between these measures and property rights from the perspective of EU law. Lastly, the paper concludes by reflecting on the importance of ecosystem restoration and underscores the necessity of achieving a synergy between environmental objectives and ownership as a fundamental real right.

2. *DOMINIUM*

2.1. Nature and limitations of ownership in Roman Law

The Roman institute of *dominium*, which forms the foundation of ownership in legal systems rooted in the Roman legal tradition, was an abstract and universal concept of property—an absolute, though not unlimited, right of a person over an object. In the early development of Roman law, particularly in the context of its procedural enforcement (*via legis actio sacramento in rem*), ownership did not necessarily signify an absolute right of dominion. Instead, it was generally understood as a superior right in relation to a specific litigation rival.[6] Since *rei vindicatio* un-

page EURACTIV, 20 February 2023, [https://www.euractiv.com/section/climate-environment/news/brussels-wrestles-with-potential-impacts-of-eu-nature-restoration-law/], Accessed 04 February 2025.

5 Michaels, R., *Property*, in: Basedow, J.; Hopt, K. J.; Zimmermann, R. (eds.), The Max Planck Encyclopaedia of European Private Law, vol. 2, Oxford University Press, Oxford, 2012, p. 1371.

6 *Cf.* Kaser, M., *The Concept of Roman Ownership*, Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law), Vol 27, No. 1, 1964, p. 8; Kaser, M., *Über 'relatives Eigentum' im altrömischen Recht*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung, vol. 102, no. 1, 1985, pp. 24; Giglio, F., *The concept of ownership in Roman law*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung, vol. 135, no. 1, 2018, pp. 84;

derwent a fundamental transformation within the formulary procedure during the Middle Republic—where only the plaintiff was required to prove ownership, and failure to do so resulted in the dismissal of the action regardless of the defendant's legal position—it can be inferred that ownership was conceived as an absolute right.[7] In the Late Republic, the terms *dominium*[8] and *proprietas* were used synonymously[9] to signify the comprehensive dominion in relation to objects, unless restricted by additional terms.[10] Due to the Roman aversion to abstract definitions,[11] no clear description of the institute has been preserved. However, ownership can be understood as full private-law sovereignty, allowing both legal and actual disposal of a thing within the limits set by the legal order and private autonomy.[12]

Indeterminacy and elasticity are considered two key characteristics of Roman property law. Indeterminacy implies that the content of ownership cannot be precisely defined, as it encompasses an unlimited set of rights over things. Elasticity, on the other hand, means that any restriction on ownership does not alter the right itself; rather, it reverts to its full scope once the limitation is removed.[13] The concept of elasticity suggests that ownership is a right with flexible boundaries, while indeterminacy requires that it includes all conceivable powers. Giglio directs our attention to the fact that the very existence of variable boundaries indicates that an owner's powers are not always absolute—otherwise, there would be no boundaries at all.[14]

Following Birks's observation that "absolute is not a word which admits of degrees"[15] it becomes clear that ownership is an absolute right only in theory. Although it was the most extensive real right, including the right to possess, enjoy, utilize, and

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Klinck, F., *Eigentumsbegriffe*, in: Babusiaux, U., *et al.* (eds.), Handbuch des römischen Privatrechts, Vol 1, Mohr Siebeck, Tübingen, 2023, pp. 1058-1059.

7 Gai. *Inst.* 4,92-93; Alf. D. 6,1,57; Kaser, M., *Das römische Privatrecht, I, Das altrömische, das vorklassische und klassische Recht*, C. H. Beck, München, 1971, p. 400.

8 The earliest reference of the term *dominium* is found in Paul's Epitomes of the Digest of Alfenus Varus D. 8,3,30.

9 *E.g.* Ner. D. 41,1,13 pr.

10 However, a certain difference in terminology becomes clear in cases where legal dominion is limited, for example, by the right of a third party or by common use; then it is generally referred to as *proprietas*, not *dominium. E.g.* Gai. D. 1,8,5 pr; Ulp. D. 4,3,7,4; Paul. D. 6,1,33; Gai. D. 7,1,3,2; Iav. D. 7,1,54; Flor. D. 13,7,35,1; Ulp. D. 29,5,1,1.

11 *Cf.* Paul. D. 50,17,1; Iav. D. 50,17,202.

12 Kaser, *op. cit.,* note 7, p. 400.

13 Bonfante, P., *Corso di diritto romano*, vol. II: La Proprietà, vol. I, Attilio Sampaolesi, Roma 1926, p. 241.

14 Giglio, *op. cit.,* note 4, p. 95.

15 Birks, P., *The Roman law concept of* dominium *and the idea of absolute ownership*, Acta Juridica, vol. 1, 1985, p. 1. Scott acknowledges that the theory of absolute title does not align with the realities of Roman legal practice. See Scott, H., *Absolute Ownership and Legal Pluralism in Roman Law: Two Arguments*, Acta Juridica, Vol 1, 2011, p. 23.

dispose of, it could have been restricted in favour of public law, neighbouring rights,[16] or by voluntary renunciation of certain rights by the owners themselves. These constraints allowed for a balance between individual property rights and collective interests, establishing a framework within which owners had to consider the overarching public good. However, in early Roman law, the expropriation of private property for the common good was still a nascent legal institution.[17] The closest equivalent was the state-mandated sale of private property, which was employed only in exceptional cases, such as the construction of aqueducts to ensure a reliable water supply.[18] Over time, various restrictions were imposed on land use to safeguard the safety,[19] health,[20] and well-being of city inhabitants.[21] Following the same principle, landowners adjacent to public roads were prohibited from obstructing the right of way,[22] riparian owners could not prevent reasonable use of riverbanks by those navigating the river,[23] and planting or erecting trees within a specified distance of an aqueduct was strictly forbidden.[24]

Although the legislator never explicitly formulated a *modus procedendi* for expropriation, by at least the Middle Republic a customary procedure had become established for individual interferences with private property, which included appropriate compensation for the affected party.[25] Whenever the value of the

16 *E.g.* Alf. D. 8,5,8,5–7; Ulp. D. 39,3,1 pr; Ulp. D. 39,2,7 pr; Ulp. D. 43,27-28.

17 Kaser, *op. cit.,* note 7, p. 405; Jones, J. W., *Expropriation in Roman Law*, Law Quarterly Review, vol. 45, no. 4, 1929, p. 514.

18 Frontinus, *De aquaeductu urbis Romae* 128: "Its fairness is all the more apparent in light of the fact that our forefathers, with remarkable equity, did not seize from private parties even those lands which were of necessary interest to the state; but when they were bringing in waters, if a landholder was recalcitrant about selling a part of his property, they paid for the whole, and then after fixing boundaries for the land that was needed they sold the property in their turn, it having been clearly established that the state as well as private parties, each within respective boundaries, should have full and absolute right." The owners of the land through which public water supply canals passed were obligated to clean and maintain them in exchange for exemption from extraordinary fees (*ab extraordinariis oneribus volumus esse immunes*). Failure to maintain the canal in good condition, thereby obstructing the aqueduct's flow, resulted in the forfeiture of the land to the state. This confiscation was likely intended not only as a punishment and deterrent but also as a means to cover repair costs that would otherwise have been borne by the state treasury. *Cf.* C. Theo. 15,2,1 = C. 11,43,1.

19 C. Theo. 15,1,4.

20 As early as the Code of the Twelve Tables, burial and cremation within city walls were prohibited to prevent the spread of infection. Ulpian (D. 47,12,3,5) cites the wording of Hadrian's rescript, which stated that anyone who buried a deceased person within the city was required to pay forty aurei to the state treasury, and the burial site would be confiscated. See also: C. Theo. 14,6,5; Ulp. D. 1,18,7.

21 C. 8,10,2-3; C. 3,34,14,1.

22 Ulp. D. 43,8,2,27.

23 Inst. 2,1,4; Paul. D. 43,12,3.

24 Frontinus, *De aquaeductu urbis Romae* 127; C. 11,43,1; C. 11,43,6,1; C. Theo. 15,2,1.

25 Pennitz, M., *Der "Enteignungsfall" im römischen Recht der Republik und des Prinzipats: eine funktional-rechtsvergleichende Problemstellung*, Bohlau, Wien, 1991, pp. 203sqq.

property to be taken was not known in advance, an assessment procedure was initiated, led by an executive official, to determine the property's value and to ensure adequate compensation to the individual concerned. There is evidence to suggest that efforts were made to provide just compensation for expropriation.[26] Although Roman law did not develop a comprehensive theory of expropriation, it clearly reflects an awareness of the importance of collective public interest over individual claims. At the same time, its deep respect for private ownership laid the groundwork for later legal doctrines aimed at balancing proprietary rights with the demands of the common good.

2.2. Contemporary Croatian property right

In the legal systems rooted in European legal tradition, ownership is a cornerstone institution, and accordingly, any changes to the legal concept of ownership necessarily affect nearly all legal relations within the system.[27] By abandoning the individualistic concept of private ownership during its inclusion in the socialist legal circle in favour of a collectivist model with pluralism of ownership forms, the very essence of the legal institution was transformed, leading to significant upheavals, including the disruption of the land registry system and increased legal uncertainty, the consequences of which are still felt today.[28] With its return to the Romano-Germanic legal family, Croatia demonstrated that a change in regime does not necessarily entail a radical break with former traditions, as even during its time within the socialist legal framework, the system did not entirely exclude the presence of Romanist substrata within its very core.[29]

The individualistic conception of ownership inherited from Roman law[30] and absolute private control over property do not exclude the fact that individuals are

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[26] For instance, Frontinus (*De aquaeductu urbis Romae* 125) refers to a *Senatus consultum* from 11 BC, which prescribed that the value of construction materials forcibly taken from a person's land for the purpose of building or repairing aqueducts should be assessed according to the judgment of *viri boni* acting as arbiters.

[27] Gavella, N., *et al., Stvarno pravo* (Property Law), Vol 1, Official Gazette, Zagreb, 2007, p. 344.

[28] Josipović, T., *Private Law Codification in The Republic of Croatia*, in: Wang, W. (ed.), Codification in International Perspective: Selected Papers from the 2nd IACL Thematic Conference, Heidelberg, New York, Dordrecht, London, Springer, 2014, p. 189.

[29] Žiha, N., *Croatian Property Law between Tradition and Transition: A Revival of the Roman Principle Superficies Solo Cedit*, in: Primorac, Z; Bussoli, C; Recker, N. (eds.), Economic and Social Development. 16th International Scientific Conference on Economic and Social Development "The Legal Challenges of Modern World", Book of Proceedings, Split, Varaždin, 2016, pp. 73–83.

[30] The right of ownership is defined by the Article 30 of the *Croatian Act on Ownership and Other Real Rights* as a real right over a specific object, granting the holder the authority to use it and enjoy any benefits it generates as they see fit, while also excluding others from interfering—except where this would infringe upon the rights of others or violate legal restrictions. Croatian Act on Ownership and Other Real Rights

not isolated but operate within a community. As such, they are obligated to act responsibly, considering the general interests of society as a whole. This concept is embodied in Article 48(2) of *The Constitution of the Republic of Croatia* (hereinafter: Constitution),[31] as well as Article 32(1) of *Croatian Act on Ownership and Other Real Rights* (hereinafter: OA), which state that ownership carries obligations. Consequently, owners and beneficiaries of property rights are required to contribute to the common good. Although the concept's content is not explicitly defined, it should be understood as the owner's duty toward society, depending on the social function of the property they own.[32] In other words, it restricts ownership rights based on the needs of the society in which the owner resides. The imposition of restrictions does not alter the substance of ownership, as it continues to entitle the owner to freely dispose of their property and its benefits and to exclude others from interfering with it. What changes under the effect of such restrictions is the ability to exercise ownership rights—that is, the scope of the owner's legal authority.[33]

Due to the social nature of ownership, public authorities will, in many cases, have the ability to seize, encumber, and restrict an individual's proprietary rights. The guarantee of ownership granted by Article 48 of the Constitution does not exclude this possibility, but rather sets boundaries for such actions by public authorities, establishing constitutional norms that determine the conditions under which interference with property rights is allowed. Article 50 of the Constitution stipulates that this can only occur exceptionally when prescribed by law, for the protection of the interests and security of the Republic of Croatia, nature, the human environment, and public health, and with compensation based on the market value. In accordance with the constitutional principle of proportionality, as set out in Article 16(2), restrictions of rights and freedoms must be proportionate to the nature of the need for such restriction in each individual case.

(Zakon o vlasništvu i drugim stvarnim pravima), Official Gazette 91/96, 68/98, 137/99, 22/00, 73/00, 114/01,79/06, 141/06, 146/08, 153/09, 90/10, 143/12, 152/14, 81/15, 94/17. Provisional translation of the outdated text is available on the website of the Croatian Judicial Academy: [https://pak.hr/cke/propisi,%20zakoni/en/OwnershipandOtherRealRights/EN.pdf], Accessed 28 February 2025.

31 *The Constitution of the Republic of Croatia* (consolidated text) [Ustav Republike Hrvatske] (Official Gazette 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14). The manifestation of the concept can be also found in other constitutions of European countries belonging to the same circle. Compare for instance Article 14 (2) *Grundgesetz für die Bundesrepublik Deutschland* in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 1 des Gesetzes vom 20. Dezember 2024 (BGBl. 2024 I Nr. 439) geändert worden is. (Basic Law for the Federal Republic of Germany]

32 Gavella, N., *Ograničenja prava vlasništva* [Restrictions of Ownership), Zbornik Pravnog fakulteta Sveučilišta u Rijeci (Collected Papers of the Faculty of Law of the University of Rijeka), Vol 19, No. 2, 1998, p. 356.

33 Gavella, *et al., op. cit.,* note 27, p. 414.

Legal restrictions imposed for the reasons outlined in Article 50(2) of the Constitution should be distinguished, in particular, from those limiting the use and exploitation of properties designated as assets of special interest to the Republic of Croatia. These resources are subject to a special legal regime under Article 52 of the Constitution and include the sea, seashore, islands, waters, airspace, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment,[34] and real estate and objects of particular cultural, historical, economic, or ecological significance.

Despite the fact that it may appear to be a simple and fair solution, the process of expropriating immovable property due to its acquisition of a special legal status has already led to significant issues in recent Croatian legal history. Since Croatia, owing to its indented coastline and rich natural resources, frequently faces conflicts between private property rights and nature protection interests, a comprehensive treatment of all such instances falls beyond the scope of this paper. Accordingly, one representative instance will be outlined. A prominent example concerns the seashore, which, in accordance with Roman legal tradition, is classified under Croatian law as *res communes omnium*—a common good accessible to all under equal conditions.[35] As such, the seashore cannot be subject to private ownership, a principle enshrined in the Constitution, the OA and the *Maritime Domain and Seaports Act* (hereinafter: MDSA).[36] Nevertheless, over the past century—including during the Communist era—certain coastal parcels were legally recognized as the subject of private rights, and as a result, some individuals have held, and continue to hold, ownership over parts of what is now designated maritime domain. The previous version of the MDSA imposed on these owners the burden of proving lawful acquisition, under penalty of automatic loss of ownership *ex lege*.[37] A critical perspective on this issue was articulated in the dissenting opinion of Judge Brkić in a ruling by the Croatian Constitutional Court. He highlighted

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[34] Furthermore, Article 168 of the Nature Protection Act (Official Gazette 80/13, 15/18, 14/19, 127/19, 155/23) establishes a specific legal framework that entitles property owners within designated protected areas to request, within two years from the entry into force of the act introducing restrictions or prohibitions on the property, either the purchase of the affected real estate at market value by the state or local authority, or the provision of a replacement property. *Cf.* also Gavella, N., *et al., op. cit.,* note 27, p. 417.

[35] For the detailed elaboration of the dubious legal status of maritime domain, see: Žiha, N.; Sukačić, M., *Troubled waters - Croatian seashore as res extra commercium in commercio*, Pravni Vjesnik, (Journal of Law), Vol 39, no. 2, 2023, pp. 7-28.

[36] Zakon o pomorskom dobru i morskim lukama (Maritime Domain and Seaports Act), Official Gazette 83/23. Currently there is no official or informal publicly available English translation of this legal text.

[37] According to Article 118 of the former Maritime Domain and Seaports Act (MDSA) (Official Gazette 158/03, 100/04,141/06, 38/09, 123/11, 56/16, 98/19), registrations of ownership or other real rights over land and buildings within the maritime domain are deemed legally invalid if a lawful method of acquisition cannot be proven. Consequently, each owner is required to demonstrate a valid basis for

the absence of any legal obligation for the state to notify property owners when their land is reclassified as maritime domain, or to offer compensation reflecting fair market value.[38] Under the current text of the MDSA, all prior registrations of maritime domain are rendered null and void.[39]

Given the unresolved challenges stemming from Croatia's complex legal and historical legacy, there is legitimate concern as to whether future exclusions of private ownership for the purpose of nature protection can be carried out in a just and equitable manner.

3. PROPERTY RIGHTS IN THE EU

3.1. Overview of EU competences

Right to property is a general principle of EU law, recognized in the case law of the Court of Justice back in 1979, and subsequently mentioned and considered in its case law as a well-established fundamental right.[40] However, it is differently defined and protected throughout different legal systems of Member States. For instance, in most civil law systems, property rights are regulated and established in the written constitutions, thus having a higher status of ordinary law that nullifies or in other ways breaches the right.[41]

The main legal source that directly mentions the right to property in the EU legislation can be seen quite late in the EU legal history, in the Charter of Fundamental Rights (hereafter Charter),[42] a legally binding catalogue of fundamental rights, principles, values, and ideas with a strong symbolic importance.[43] It was drafted

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acquisition, regardless of whether they—or their legal predecessor—were already in possession of such rights at the time of registration.

38 Constitutional Court decision U-I-6256/2014 from 9th October 2019.

39 It remains debatable whether such a solution aligns with the principle of vested rights, given that the current owner acquired the immovable property on valid legal grounds from a predecessor who had lawfully obtained the right at a time when such acquisition was permissible. *Cf.* Vezmar Barlek, I., *Primjena načela legitimnih očekivanja u praksi Upravnog suda Republike Hrvatske* [*Application of the Principle of Legitimate Expectations in the Case Law of the Administrative Court of the Republic of Croatia*], Zbornik Pravnog fakulteta Sveučilišta u Rijeci (Collected Papers of the Faculty of Law of the University of Rijeka), Vol 32, no. 1, 2011, p. 571.

40 Case 44/79, *Liselotte Hauer v Land Rheinland-Pfalz* [1979] ECR 3727. *Cf.* Case 59/83 *SA Biovilac NV v European Economic Community* [1984] ECR 4057, par. 21; Case C-347/03 *Regione autonoma Friuli-Venezia Giulia and ERSA* [2005] ECR I-3785, par. 119.

41 Winter, G., *Property and Environmental Protection,* in: Winter, G. (ed.), Property and Environmental Protection in Europe, Europa Law Publishing, Groningen, 2016, p. 7.

42 Charter of Fundamental Right of the European Union, OJ C 326, 26 Oct 2012.

43 Bernhard, N., *A 'New Governance' Approach to Economic, Social and Cultural Rights in the EU,* in: Harvey, T.; Kenner, J. (eds.), Economic and Social Rights Under the EU Charter of Fundamental Rights:

up in 1999-2000, but eventually came into full legal power in December 2009,[44] together with the Lisbon Treaty.[45] By Article 6(1) of the Treaty on the European Union, the Union recognizes the rights, freedoms and principles set out in the Charter, and therefore the Charter is a part of the primary law of the EU.[46] An important consequence of this regulation is the fact that the Charter represents a major subject to the jurisdiction of the Court of Justice of the European Union (hereafter CJEU). Since the Charter has a binding nature, it also guarantees the respect of fundamental rights in both the elaboration and the implementation of EU law.[47] In addition, it is worth noting that Article 345 of the Treaty of the Functioning of the EU (hereafter TFEU) states that the Treaties shall in no way prejudice the rules of Member States concerning the system of property ownership. Therefore, such rights are in the competencies of Member States.

In the context of property rights, the Charter's Article 17(1) states that everyone has the right to own, use, dispose of, and bequeath his or her lawfully acquired possessions. In addition, no one may be deprived of his possession, except in the public interest, and under the conditions provided for by law. If such an event occurs, the owner is entitled to fair compensation in good time. Lastly, the article states that the use of property may be regulated by law in so far as is necessary for the general interest.

The formulation of Article 17 of the Charter is modelled on Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR),[48] and therefore it confers the same meaning and affords an equivalent scope of protection.[49] In this regard, Article 52(3) of the Charter is particularly relevant, as it provides that, insofar as rights enshrined in the Charter correspond to those guaranteed by the

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A Legal Perspective, Hart Publishing, Oxford, 2003, p. 247; Kerikmäe, T., *EU Charter: Its Nature, Innovative Character, and Horizontal Effect*, in: Kerikmäe, T.(ed.), Protecting Human Rights in the EU, Controversies and Challenges of the Charter of Fundamental Rights, Springer, Heidelberg, 2014, p. 8.

44 Craig, P.; de Búrca, G., *EU Law: Text, Cases, and Materials,* Oxford University Press, Oxford, 2011, p. 94.

45 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 83, 30 March 2010.

46 Zetterquist, O., *Charter of Fundamental Rights and the European Res Publica*, in: Di Federico, G. (ed.), The EU Charter of Fundamental Rights: From Declaration to Binding Instrument, Springer, Heidelberg, 2011, p. 3.

47 Di Federico, G., *Fundamental Rights in the EU: Legal Pluralism and Multi-Level Protection After the Lisbon Treat*, in: Di Federico, G. (ed.), The EU Charter of Fundamental Rights: From Declaration to Binding Instrument, Springer, Heidelberg, 2011, p. 53.

48 European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

49 Lock, T., *Articles 6 - 19,* in: Kellerbauer M. *et al.* (eds.), The EU Treaties and the Charter of Fundamental Rights, A Commentary, Oxford University Press, Oxford, 2019, p. 2149.; Becker, F., *Market Regulation and the 'Right to Property' in the European Economic Constitution*, Yearbook of European Law, Vol 26, No. 1, 2007, p. 268.

Convention for the Protection of Human Rights and Fundamental Freedoms, their interpretation shall be in line with the interpretation given by the European Court of Human Rights (ECtHR). This makes the extensive jurisprudence of the ECtHR directly applicable to the interpretation and application of Article 17 of the Charter. Article 17 guarantees every individual the right to own, use, dispose of, and bequeath lawfully acquired possessions. The provision not only imposes a negative obligation on the European Union and its Member States to refrain from unjustified interference with the right to property, but also entails positive obligations to ensure the effective enjoyment of that right. Accordingly, States must take appropriate measures to secure the conditions under which property rights can be exercised meaningfully and without disproportionate restriction.[50]

Article 17 of the Charter, when read in conjunction with Article 52(5), establishes that the right to property must be respected not only by the institutions, bodies, offices, and agencies of the European Union, but also by the Member States.[51] However, Member States are bound by the Charter solely when acting within the scope of EU law.

Additional dimensions of the protection of property rights are reflected in Article 52(4), which stipulates that the Charter recognizes fundamental rights as they result from the constitutional traditions common to the Member States, and that such rights shall be interpreted in harmony with those traditions. Although the provision does not specify which Charter rights fall within this category, legal scholarship generally agrees that it refers to those rights for which a common constitutional foundation exists across Member States. Notable examples include Article 14(1) (right to education), Article 17(1) (right to property), and Article 49(3) (the principle of proportionality of criminal offences and penalties). Thus, the right to property as enshrined in Article 17(1) is encompassed by this interpretive principle.

Accordingly, the interpretation of the right to property under the Charter should be informed by the constitutional traditions of the Member State from which the case arises. While this approach promotes respect for national legal specificities, it also permits divergent interpretations and outcomes in comparable cases across different jurisdictions, potentially affecting legal certainty and uniformity within the EU legal order.

The CJEU's definition of property rights was given in the *Sky Österreich* case, *as rights with an asset value creating an established legal position under the legal system,*

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50 Lock, *Ibid.,* p. 2150. *Cf. Öneryıldız v Turkey* (2004) ECHR 2004-XII, especially par. 134.

51 Wollenschläger, F., *Article 17(1) – Right to Property,* in: Peers, S., *et al* (eds.), The EU Charter of Fundamental Rights, A Commentary*,* Hart, Oxford, 2021, p. 491.

enabling the holder to exercise those rights autonomously and for his benefit.[52] In this case, the CJEU ruled that exclusive broadcasting rights fall outside the scope of Article 17(1), thereby granting Member States' legislators a crucial role in defining what constitutes property. The decision faced criticism, primarily for allowing excessive legislative discretion. However, it aligns with the previously mentioned principle of respecting Member States' legal traditions regarding property rights.

In theory, the right to property can be understood from both negative and positive dimensions. From a negative perspective, it serves to protect individuals from state interference with their possessions, effectively prohibiting certain actions. Conversely, from a positive perspective, administrative procedures and legal protections related to property rights must be implemented to a degree that ensures individuals can fully enjoy their property.[53] Thus, the state is obligated to take all necessary measures to safeguard property rights—not only against its own actions but also against infringements by private individuals and natural threats.

3.2. Limitations and derogations

Besides the protection of the property, Article 17(1) of the Charter enables two limitations concerning deprivation and the modality of use. The Charter uses phrases *no one may be deprived of his or her possession* and *the regulating the use of property*. The second term, "regulation of the use of property," encompasses all measures that define or restrict the exercise of property rights. Property use can be influenced by both legislative norms and individual measures enacted by Member States. Deprivation of possession constitutes formal expropriation, whether it stems directly from legislation or from measures implementing such legislation.[54] The ECHR uses the term *transfer of ownership*, as seen in the case of *Sporrong and Lönnroth* from 1985.[55] In this case, Sweden issued expropriation permits that created a long-term planning blight on the property, thereby lowering its selling price below the usual market value. However, the ECHR ultimately ruled that this

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[52] Case C-283/11 *Sky Österreich GmbH v Österreichischer Rundfunk* [2013] ECLI:EU:C:2013:28, par. 34. Such definition was repeatedly confirmed in latter cases, for instance in: Case C-398/13 P *Inuit Tapiriit Kanatami and Others v Commission* [2015] EU:C:2015:535, par. 60 or Case C-235/17 *European Commission v Hungary* [2019] ECLI:EU:C:2019:432, par. 69.

[53] Wollenschläger, *op. cit.,* note 51, p. 502. *Cf. Abukauskai v Lithuania* (2020) EHRR 72065/17, par. 54 or Case T-318/01 *Othman v Council and Commission* [2009] ECR II-01627, par. 91.

[54] Wollenschläger, I*bid.,* p. 505. *Cf.* Frenz, W., *Handbuch Europarecht*, vol. 4, Springer, Berlin, 2009, p. 853.

[55] *Sporrong and Lönnroth v Sweden* (1985) EHRR 7151/75, par. 63. *Cf.* Schaffer, J.K., *et al.*, *An Unlikely Rights Revolution: Legal Mobilization in Scandinavia Since the 1970s*, Nordic Journal of Human Rights, vol. 42, issue 1, 2024, p 17.

impact on the property did not constitute deprivation.[56] Therefore, for a measure to be considered deprivation, it must completely and permanently strip the owner of their property rights.

Advocate General Wathelet provided a pertinent definition of direct expropriation, describing it as *measures of nationalization or dispossession by formal transfer of title or physical seizure*.[57] According to this interpretation, an interference with property qualifies as expropriation only where ownership is transferred—either to a public authority or a private entity—or where the property is physically confiscated. However, this concept has been extended to include *de facto* expropriations or deprivations—measures which, although not formally designated as expropriations, produce equivalent or substantially similar legal and economic consequences for the property holder. Such indirect or constructive takings are equally subject to legal scrutiny and protection under both EU and international human rights standards. A notable illustration of *de facto* deprivation is provided in the judgment of the ECHR in *Hentrich v. France*, in which the Court examined the substance of the measure rather than its formal classification, emphasising the importance of the practical effect on the property holder's rights.[58]

Another example closely related to the topic of this research is the 2008 ECHR case Köktepe v. Turkey.[59] The case concerns a Turkish national residing in Çanakkale, Turkey, who in 1993 acquired a parcel of forest land with a valid title issued by the General Directorate of Land Registration. However, the same land had already been officially designated as part of the public forest by the Forestry Commission in 1990—three years prior to the issuance of the title. Mr. Köktepe challenged this designation by filing a request for judicial review with the Çanakkale District Court. In the course of the proceedings, an expert report from 1998 stated that the disputed land was not part of the public forest. However, a subsequent expert report from 2000 reached the opposite conclusion, asserting that the land did fall within public forest boundaries. That same year, the court dismissed Mr. Köktepe's claim, a decision later upheld by the appellate court. In addition to losing the legal battle, Mr. Köktepe was sentenced to one year and three months in prison for clearing a portion of the land without the required authorization. Finally, in 2007, the Ministry of Forestry initiated legal proceedings to annul Mr. Köktepe's land title in the Land Registry, a measure that would formally strip him of ownership.[60]

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56 Jacobs, F. *et al.*, *The European Convention on Human rights,* Oxford University Press, Oxford, 2014, p. 503

57 Case C-284/16 *Achmea BV* [2018] ECLI:EU:C:2017:699, Opinion of AG Wathelet, par. 221 and n. 177.

58 *Hentrich v France* (1994) 18 EHRR 440. See more in Jacobs *et al., op. cit.,* note 56, p. 505.

59 *Köktepe v Turkey* (2008) EHRR App. No. 35785/03.

60 *Köktepe v. Turkey*, Human Rights Case Digest, Vol 18, issue 11-12, 2007-2008, p. 1166.

The ECHR upheld the decisions of the Turkish courts, confirming that the disputed land constituted public forest and affirming that the aim of depriving the applicant of his possession was legitimate in light of nature protection. The Court further noted that certain fundamental rights should not automatically be prioritized over environmental protection. However, it also emphasized a crucial point: the applicant had acquired the land in good faith and was subsequently unable to make any use of it. Despite holding a valid title, he was barred from harvesting, cultivating, or even selling the land. This placed a disproportionate burden on him, amounting to a *de facto* expropriation—particularly given that the forest delimitation was permanent, no effective domestic remedy was available, and no compensation was provided. The case illustrates that even when pursuing unquestionably important goals such as environmental protection, these efforts must not disregard other fundamental rights. Instead, they should be pursued in a manner that respects and aligns with those rights.

Property rights may be restricted to the extent that an individual is deprived of possession, but such interference requires strong justification. Article 17(1), second sentence of the Charter, outlines three key conditions for lawful deprivation. First, the measure must be provided for by law, ensuring a clear, foreseeable, and accessible legal framework.[61] Second, the deprivation must pursue a legitimate objective in the public interest. Third, fair compensation must be paid within a reasonable timeframe.[62] In addition, the CJEU has confirmed that Article 52(1) of the Charter also applies,[63] meaning that any limitation on property rights must pass the proportionality test. Furthermore, an additional procedural safeguard requires *that the applicable procedures must also afford the person concerned a reasonable opportunity of putting his case to the competent authorities*.[64] Therefore, while deprivation of possession is permissible under EU law, Member States must take care not to exceed the strict conditions and procedural guarantees that protect the fundamental right to property.

The second limitation on the right to property concerns the regulation of its use. Such regulation must be established by law and pursue an objective of general interest. The notion of general interest is not left to arbitrary interpretation but

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61 Case T-786/14 *Bourdouvali* [2018] ECLI:EU:T:2018:487, par. 268. See more in: Frenz, *op. cit.,* note 54, p. 858.

62 Such a requirement was applied in the jurisprudence of ECHR, even though it was not directly mentioned in the Additional Protocol to European Convention on Human rights. *Cf.* Wollenschläger, *op. cit.,* note 51, p. 508.

63 Case C-235/17 *Commission v Hungary*, note 52.

64 Joined Cases C-402/05 P and C-415/05 P *Kadi* [2008] ECR I-6351, par. 368.

must be construed in light of relevant case law.[65] Furthermore, any such limitation must comply with the requirements of Article 52(1) of the Charter, which imposes conditions of legality, necessity, and proportionality.

While compensation is typically associated with expropriation, in the context of regulatory restrictions it is not required as a general rule. The *Booker Aquaculture* case illustrates this point, where the Court held that the absence of compensation did not, in itself, constitute a violation of the right to property, provided the interference was proportionate and pursued a legitimate aim.[66]

The proportionality test, in this context, serves as a safeguard mechanism, ensuring that a fair balance is struck between the general interest of the community and the protection of individual rights. It seeks to ensure that fundamental rights, including property rights, are restricted only to the extent necessary to achieve a legitimate public objective.[67] In essence, it prevents the excessive or arbitrary sacrifice of individual rights for collective goals, preserving the core of the right while allowing for necessary societal limitations.

4. EU NATURE RESTORATION LAW

The legislative process leading to the adoption of the EU Nature Restoration Law was neither swift nor straightforward. The European Commission presented the Proposal for a Nature Restoration Regulation[68] in June 2022. Subsequently, the text underwent amendments by the European Parliament, and a provisional agreement on the final version was reached in February 2023. The Council of the European Union formally adopted the Regulation on 17 June 2024, and the EU Nature Restoration Law entered into force on 18 August 2024.

The Regulation sets forth ambitious objectives, as outlined in Article 1(1), notably the restoration of at least 20% of the Union's land and sea areas by 2030, and the restoration of all ecosystems in need of recovery by 2050. Importantly, the term "restoration," as used in both the title and the substantive provisions of the

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65 For instance, see Case C-200/96 Metronome Musik [1998] ECR I-1953, para. 21: […] *the exercise of the right to property and the freedom to pursue a trade or profession may be restricted, provided that any restrictions in fact correspond to objectives of general interest pursued by the European Community and do not constitute in relation to the aim pursued a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed* […].

66 Joined Cases C-20/00 and C-64/00 *Booker Aquaculture* [2003] ECR I-7411, par. 79 and 93.

67 Becker, *op. cit.*, note 49, p. 283. *Cf. Sporrong and Lönnroth v Sweden* (1985), note 55, par. 69 or Case C-280/93, Germany v Council [1994] ECR I-4973, par. 77, 78, 88 *et seq.*

68 Proposal for a Regulation of the European Parliament and of the Council on nature restoration COM/2022/304 final.

Regulation, should not be conflated with mere protection or conservation. Rather, restoration implies active intervention to improve the current state of nature, with the aim of re-establishing degraded ecosystems and enhancing biodiversity beyond their present condition.[69]

Such a goal is in line with the United Nation's decision to proclaim the 2021-2030 as a Decade on Ecosystem Restoration, with the aim to support efforts to prevent the degradation of ecosystems worldwide, but also to raise awareness of the significance of ecosystem restoration.[70] EU Nature restoration law acknowledges its relevance and refers to the UN resolution in paragraph 6. In addition, the concept of restoration also means that the obligations and responsibility on the Member States seeks for more engagement.

EU Nature restoration law creates obligations for Member States, in relation to natural sites enumerated in Annex I for land areas and in Annex II for marine areas. Both sites (land and marine) must be restored to a good condition, as prescribed by Articles 5 and 6 of the legal text. Good condition was defined in Article 3(4) as a *state in which the key characteristics of an ecosystem reflect the high level of ecological integrity, stability and resilience*. In order to reach defined goals, Member States have an obligation to prepare National Restoration Plans, that will be approved by the Commission later on, as prescribed by Article 13. Within their national restoration plans, Member States are required to quantify the areas in need of restoration, based on a strict set of criteria prescribed by the Regulation. Moreover, Member States must define what constitutes a "satisfactory level of restoration."[71] However, the Regulation does not provide a clear definition of this concept, which raises concerns regarding legal certainty—both for Member States in the implementation process and for landowners whose property may be subject to restoration measures. The ambiguity surrounding the term "satisfactory" raises a fundamental question: to whom must the restoration efforts be satisfactory? The absence of a precise benchmark may result in divergent interpretations and inconsistent application across Member States. Article 11 of the Regulation provides that Member States shall prepare restoration plans and conduct monitoring and research taking into account the latest scientific evidence. While this reflects a commendable commitment to science-based policymaking, its broad and open-

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69 Hoek, N., *Nature Restoration put to EU Law: Tensions and Synergies between Private Property Rights and Environmental Protection*, in: Hoek, N. *et al* (eds.), Spanningen tussen duurzaamheid en Europees recht, Kluwer, 2024., p. 132.

70 United Nations Decade on Ecosystem Restoration (2021-2030): resolution / adopted by the General Assembly, 2019, A/RES/73/284 .

71 Hoek, N., *A Critical Analysis of the Regulation on Nature Restoration: Have the problems been resolved?,* European Energy and Environmental Law Review, Vol 31, Issue 5, 2022, p. 326.

ended formulation may complicate the practical implementation and measurability of restoration objectives. Furthermore, Annex VII of the Regulation contains an indicative list of potential measures that Member States may incorporate into their national restoration plans. However, the discretion left to Member States regarding which measures to apply leaves significant uncertainty as to the Regulation's uniformity in practice. The effectiveness and coherence of its implementation will depend heavily on how each Member State interprets and applies these provisions within their respective legal and ecological contexts.

One of the foreseeable challenges associated with the implementation of the EU Nature Restoration Law lies in the financial burden it may impose on Member States. The costs of restoration vary significantly depending on the type of ecosystem in question, which in turn differs across Member States due to their distinct geographic and ecological characteristics.[72] For example, Croatia, with its unique combination of an indented Adriatic coastline and expansive lowland plains, will likely be required to adopt a wide array of restoration measures—some of which will entail substantial financial outlays, while others may involve comparatively lower costs.

Paragraph 78 of the preamble to the Regulation acknowledges this issue by stating that, in order to meet the targets and obligations laid down therein, it is essential that adequate private and public investment be mobilised. It further suggests that Member States should integrate expenditure related to biodiversity objectives into their national budgets. However, beyond these general proclamations, the Regulation provides little concrete guidance on funding mechanisms, and it is clear from the preamble that the primary responsibility for financing the implementation will lie with the national budgets of Member States.

Given the potentially significant costs involved, the absence of a dedicated and clearly defined EU-level financial support framework raises concerns. It remains to be seen what concrete measures Member States will adopt to fulfil their obligations under the Regulation, and to what extent the financial burden might influence the scope, pace, and ultimately the success of restoration efforts. A more pressing concern may therefore be whether such an arrangement—placing the majority of financial responsibility on national authorities—could undermine the effectiveness and uniformity of nature restoration across the Union.

Taking into account the vast territorial scope of areas designated for restoration across the European Union, the measures envisaged under the EU Nature Resto-

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[72] European Commission: Directorate-General for Environment, *Impact assessment study to support the development of legally binding EU nature restoration targets – Final report*, Publications Office of the European Union, 2023 available at:
[https://data.europa.eu/doi/10.2779/275295], Accessed 28 February 2025.

ration Law will inevitably affect land owned by private individuals. Certain measures may impose restrictions on the exercise of property rights, while others may establish positive obligations for landowners, such as the duty to implement or tolerate specific restoration activities on their land. The Regulation delegates substantial discretion to Member States through the mechanism of National Restoration Plans, thereby effectively shifting the anticipated tensions between private property rights and restoration objectives from the EU to the national level.[73] This legislative design is consistent with Article 345 of the TFEU, which affirms that the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership. In essence, Article 345 ensures that the EU lacks competence to interfere with national rules on property regimes, allowing Member States to determine the scope and limitations of property rights within their jurisdictions.[74] However, this same provision may also represent a structural limitation to deeper integration in the field of environmental protection. By preserving national autonomy over property regimes, Article 345 TFEU could hinder the uniform application of restoration measures across the EU, potentially resulting in fragmented and uneven environmental outcomes.

CJEU has already dealt with cases situated at the intersection of environmental regulation and the right to property as a fundamental right protected under the Charter. A notable example is the *Siragusa* case decided in 2014.[75] In this case, Mr. Siragusa owned land located within a designated landscape conservation area in Italy. He carried out certain alterations to his land without first obtaining the necessary landscape compatibility clearance from the competent public authority, as required under national law. While Italian legislation permits the possibility of subsequent regularisation of such works, the administrative authority in this instance ordered the restoration of the land to its original state. Mr. Siragusa challenged the decision, and the referring Italian court raised the question of whether Article 17 of the Charter—guaranteeing the right to property—had been infringed. However, the CJEU held that it lacked jurisdiction to adjudicate the matter, finding that the national provisions at issue did not constitute an implementation of EU law, as required under Article 51(1) of the Charter. The Court emphasized that the mere fact that the matter fell within a broader context of environmental protection was not, in and of itself, sufficient to bring it within the scope of EU law.[76] This judgment,

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73 Hoek, *op. cit.*, note 69, p. 137 .

74 See more *supra,* subchapter 3.1. Overview of EU competences.

75 Case C-206/13 *Siragusa* [2014] ECLI:EU:C:2014:126.

76 Jans, H.J.; Outhuijse, A., *Property and Environmental Protection in the Jurisprudence of the Court of Justice of the European Union,* in: Winter, G. (ed.), Property and Environmental Protection in Europe, Europa Law Publishing, Groningen, 2016, p. 47.

however, predates the adoption and entry into force of the EU Nature Restoration Law. Had a similar case arisen after the Regulation became binding, the outcome could very well have been different. If the contested national measures were adopted in implementation of obligations derived from the EU Nature Restoration Law, the CJEU would likely have jurisdiction to assess compliance with the Charter, including Article 17. This illustrates how the increasing integration of environmental objectives into EU legal obligations may trigger the full applicability of Charter rights, particularly where private property is directly affected by measures adopted in furtherance of EU environmental law.

However, the opposite solution was given in the *Azienda* case,[77] dealing with the ban of the installation of wind turbines not intended for the home provisions, in a connection with Wild Birds and Habitats directives.[78] Here CJEU decided that the protection given by these two directives does not prohibit all human activity in nature protection areas created by the provisions of quoted directives (Natura 2000 network). However, the Member States' regulation must be in line with the objective of the Habitats Directive, meaning they possibly could limit ownership rights in order to reach prescribed objectives.[79] Such a ruling possibly indirectly circumvents the lack of competence of the EU in the regard the ownership, as prescribed by Article 345 of TFEU. In addition, the national legislation prohibiting the construction of new wind turbines in Nature 2000 network areas because of the protection of bird populations, as seen in this case, provides stricter system of protection then required by Habitats Directive.[80] Therefore, the protection of bird and other species could affect the property rights in Member States and it is up to Member States to adopt additional rules regarding the exercise of ownership rights. As can be seen in both cases, delegating decision-making to a national level could lead to uneven practice and consequently to legal uncertainty.

Considering all the potential issues outlined, the foreseeable challenges can be examined through the lens of the legislative changes required in Croatia concerning the legal status of land associated with water bodies. Under Croatian law, such land is classified as water estate, as defined by the Water Act (hereinafter: WA).

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77 Case C-2/10 *Azienda Agro-Zootecnica Franchini sarl* [2011] ECLI:EU:C:2011:502.

78 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Codified version), OJ L 20, 26.1.2010 and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal L 206, 22 July 1992.

79 Garcia-Ureta, A., *The ECJ Jurisprudence on Nature Protection and Ownership Rights,* in: Winter, G. (ed.), Property and Environmental Protection in Europe*,* Europa Law Publishing, Groningen, 2016, p. 73.

80 Such a solution is in line with the Article 193 TFEU, providing Member States to maintain or introduce more stringent protective measures.

This category includes land encompassing aquifers, abandoned surface waterbeds, both regulated and unregulated inundation areas, zones necessary for the physical protection of water sources, and islands that have formed—or may form—within an aquifer.[81] Water estates clearly represent a significant category of land parcels subject to the EU Nature Restoration Law, making it essential that their legal status and regulation be clearly and precisely defined.

Under the current WA, certain categories of water estates may remain in private ownership, whereas others—classified as public water estates—are excluded from private ownership, as they constitute public goods not subject to individual property rights.[82] In specific circumstances, privately owned water estates may be reclassified as public, thereby triggering an expropriation process.

Croatian legal practice since the 1990s has revealed a range of issues and legal uncertainties for previous owners of such land. The 1995 WA contained several inconsistencies and illogical provisions that interfered with the protection of individual property rights.[83] The 2019 WA, currently in force, has undergone multiple amendments, including a significant 2021 revision, in which the legislator introduced a rule mandating market-value compensation for landowners whose property was *ex lege* designated as a public water estate.[84] This legislative change suggests that, prior to the amendment, some landowners were not automatically entitled to compensation under the law and were compelled to initiate legal proceedings to secure their property rights. This is exemplified by a case brought before the Varaždin County Court, which highlights the necessity of judicial intervention in the absence of effective administrative remedies.[85]

Bearing in mind all the previously stated concerns, the implementation of the EU Nature Restoration Law within the Croatian legal system remains highly uncertain. Given the system's sluggishness, the inherited issues stemming from Croatia's socialist legal past, and the complexities of privatization, it is questionable whether

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81 Article 8 of Water Act (Zakon o vodama), Official Gazette No. 66/19, 84/21, 47/23). Provisional translation of the outdated text is available on the website of the Croatian Ministry of Foreign and European Affair: [https://mvep.gov.hr/UserDocsImages/files/file/dokumenti/prevodenje/zakoni/zakon-o-vodama-nn-153-09-eng.pdf], Accessed 28 February 2025.

82 Article 11 of WA in connection with Article 3 of OA .

83 See the detailed elaboration in: Jug, J., *Raspolaganje vodnim dobrom* (*Disposing of water resources*), Zbornik Pravnog fakulteta Sveučilišta u Rijeci [Collected Papers of the Faculty of Law of the University of Rijeka], vol. 37, no. 1, 2016, pp. 371-372.

84 Legislator explanation could be found in the Consultation with the interested public for the WA Amendment on the Croatian Ministry of Justice, Public Administration and Digital Transformation website: [https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=16007], Accessed 28 February 2025 .

85 Judgment of the Varaždin's County Court Gž Zk 841/2021-2.

the legal framework will be sufficiently prepared to enforce ownership restrictions in pursuit of broader EU objectives. It is reasonable to expect that significant challenges will only begin to emerge during the implementation phase.

5. CONCLUSION

Considering that the degradation of biodiversity represents a serious threat to society and requires a systematic reassessment of our relationship with nature, the European Commission has proposed a very ambitious restoration law, which aims to fill existing gaps in EU legislation on nature protection by introducing legally binding restoration targets (implying not just protection but an active improvement of nature), that could potentially create challenges between the desire for nature restoration on the one hand and private ownership on the other.

As one of the hallmarks of the civil law tradition prevalent in the legal systems of continental Europe that were schooled by the Roman spirit, the institution of ownership (*dominium*) grants the owner the broadest possible powers over their property, including the right to destroy it. Any imposition of restrictions did not modify the essence, but affected the exercise of ownership—that is, the practical extent of the owner's legal authority over the property. However, since Roman times, such absolute powers have not been without limits; they were frequently constrained by social and public considerations, as well as the obligation to serve the common good. Regardless of this common concept deeply rooted in the shared Roman legal tradition, we anticipate that specific national procedures governing expropriation and compensation will, in practice, lead to unequal implementation of nature restoration across Member States. As a result, the EU Nature Restoration Law may inadvertently generate more legal ambiguity than clarity, ultimately undermining its core objective of restoring nature.

Contrary to the existing criticism, the EU Nature Restoration Law does not violate fundamental rights, as it does not directly regulate ownership rights—something explicitly precluded by Article 345 TFEU. However, it strategically shifts potential breaches to the national level, where property rights may be restricted under certain conditions. Such restrictions are not without exceptions, as recognized in the Charter, which allows for limitations and derogations under specific circumstances. To be legally valid, any restriction on property must serve an objectively justified general interest and be proportionate to the goal pursued. While compensation may be required, this is not always the case, as demonstrated in CJEU case law. Finally, expropriation must be prescribed by law, serve a public interest, comply with the principle of proportionality, and entitle the affected owner to fair compensation.

Furthermore, the Regulation requires Member States to prepare National Restoration Plans, quantify areas needing restoration, and define what constitutes a "satisfactory level of restoration." However, the lack of a clear definition for "satisfactory" creates legal uncertainty for both Member States and landowners. Although the plans must be based on scientific evidence, their broad nature complicates practical implementation. The discretion given to Member States in choosing restoration measures, as listed in Annex VII, further contributes to this uncertainty.

A major challenge lies likewise in the financial burden that the restoration efforts will impose on Member States. Costs will vary significantly depending on the type of ecosystem. Countries like Croatia, with its diverse natural conditions—including the unique combination of an indented Adriatic coastline and expansive lowland plains—will likely need to implement a wide range of restoration measures. While the Regulation calls for public and private investment, the primary financial responsibility falls on national budgets, with little guidance from the EU. This lack of a dedicated EU financial framework raises concerns about the effectiveness and uniformity of implementation.

The measures outlined in the Regulation will inevitably affect private property rights, imposing restrictions or obligations on landowners. Since the management of property rights is left to Member States, perseving national autonomy over property regimes, this could create inconsistencies in the application of restoration measures across the EU, potentially leading to fragmented environmental protection. Without intending to be pessimistic, we consider the expectation that 100% restoration will be achieved by 2050 to be unrealistic, as this would require greater integration and the transfer of competencies to the EU level.

Even in the absence of EU intervention, the situation in Croatia was already complex and fraught with issues due to legal uncertainties surrounding property rights, inconsistent application of laws, and complications in expropriation and land ownership disputes. Given these challenges, it remains uncertain whether Croatia's legal system is equipped to effectively enforce the restoration measures mandated by the EU. Given that more than 38% of Croatia's territory falls within Natura 2000 areas, this article serves merely as a general introduction to a complex topic which, while ultimately aimed at supporting ecosystem restoration as a key tool in addressing climate change and biodiversity loss, will inevitably raise numerous legal questions and open space for further academic debate.

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