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Implementing Rights of Nature: An EU Natureship to Address Anthropocentrism in Environmental Law

ARTICLE

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ABSTRACT

Transboundary issues – from (chemical) pollution, land-use change to unsustainable levels of exploitation – have been eroding natural sites across Europe, reducing biodiversity in the process. In light of this, this paper analyses the comprehensiveness of EU environmental law, appraising its underlying ethos in the process. Additionally, it explores whether a Natureship Framework Directive at the European Union (EU) level, which establishes legal personality for natural sites, can deliver a 'change of course' with respect to the anthropocentric view underpinning environmental law as a pressing thought experiment. It constructs a (fictive) law which grants natural sites substantive and procedural rights, conceptualising how such an instrument may take shape. One finding is that an EU Natureship may be a robust tool to address flaws within EU environmental law. For example, the attribution of legal personality to natural sites alongside the appointment of formal representatives can significantly relieve the burden for NGOs and the European Commission, which may suffer from limited resources when it comes to judicial enforcement of environmental norms (or, alternatively, ecological rights). Other benefits pertain to nature management, which may be less complex and more politically stable under the approach put forward in this paper. An EU Natureship, therefore, may provide a vehicle to shift EU environmental law from the anthropocentric to the ecocentric.

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1. INTRODUCTION: RIGHTS OF NATURE (RON) AS A RESPONSE TO FAILING PROTECTION

The degradation of natural ecosystems continues, as confirmed by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), despite the adoption of a wide degree of national, regional, and international nature conservation instruments.[1] Against this backdrop of continuing ecological decay, new forms of protection have been proposed by international lawyers, NGOs, and academics, which challenge existing environmental laws.[2] One such regulatory approach is the assignment of legal personhood to natural sites, which directly grants standing in court and, perhaps more pressingly, confers substantive and procedural rights to said natural sites.[3] In a general sense, the *rights of nature* movement mirrors how the law confers rights (but not obligations) to individuals, companies, or institutions. This controversial yet much-cited idea was first put forward by Christopher Stone in 1972.[4] Fundamentally, it represents a shift from a view of nature as an *object* before the law to a view of nature as a *subject* of the law. This movement has gained prominence, given the pressures which natural ecosystems face. A practical case of ecological decline can be found in the Dutch, German and Danish Wadden Sea, where climate change, pollution, and large-scale mining activities are causing irreversible damage to the natural site, with modern-day legal instruments seemingly unable to halt this decline.[5] For example, in 2022, a permit for mining was issued in the Netherlands, approving the further exploitation of the Wadden Sea, despite a backlash from a plethora of NGOs and local residents.[6]

In light of these pressures, the case for assigning legal personhood to the Wadden Sea was made by Lambooy and others in 2019.[7] In their article, the authors argued in favour of adopting legal personhood for the Dutch part of the Wadden Sea.[8] In this context, they put forward the idea of a 'Natureship'. Linguistically speaking, a Natureship places the focus on the underlying entity, namely, the natural site. The suffix *-ship* implies a position held and/or created, a grammatical feature common in both Dutch and English. Their article defines a Natureship as a 'public law person' that combines the power of a public institution, such as environmental management, with private powers, such as the ability to own assets or claim reparations. The statutory purpose of the Natureship would be to 'protect and support the ecological coherence' of a specified geographical area, with significant independence from external governmental interference. Lambooy and others argue that, under Dutch law, legal personhood can be granted to natural sites in this form.[9] Here lies the relevance of this contribution: the concept of a Natureship implements the Rights of Nature movement in *practical terms*. The idea has received traction in the Netherlands, where the 'rights for the Wadden Sea' has been transformed from a foreign concept into an issue seriously contemplated within the national Parliament.[10]

However, while this paper by Lambooy and others is a highly valuable contribution to legal scholarship, it does not take into account the transboundary nature of most ecosystems. The Wadden Sea, for example, spans three different EU Member States, namely, the Netherlands,

1 IPBES, 'Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services' (2019) <DOI: 10.5281/zenodo.6417333>.

2 D Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (Ingram Publisher Services 2017); M Van Rijswick, C Suykens and H Gillissen, 'Policy Brief: Should Rivers Have Rights?' (2019) 12 Water Internatiional 1.H Kasper Gillissen and others, 'Towards a Rights Based Approach in EU International River Basin Governance? Lessons from the Scheldt and Ems Basins' (2010) 6-7 Water International 701.

3 Boyd (n 2) ; Van Rijswick, Suykens and Gillissen (n 2).

4 CD Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects' (1974) 26 Stanford Law Review 450.

5 T Lambooy, J Venis and C Stokkermans, 'A Case for Granting Legal Personality to the Dutch Part of the Wadden Sea' (2019) 44(6) Water International 786.

6 K Marée, 'Vijlbrief Geeft Vergunning voor Gaswinning op Noordzee' *NRC* (Amsterdam, 1 June 2022) <https://www.nrc.nl/nieuws/2022/06/01/vijlbrief-geeft-vergunning-voor-gaswinning-op-noordzee-a4131251> accessed 2 April 2023.

7 Lambooy and others (n 5).

8 ibid.

9 ibid. The concept, as such, has been inspired by the long-standing tradition of *waterschappen* (or water boards) in the Netherlands, which are public institutions charged with governing water bodies – balancing conflicting interests from farming to nature conservation.

10 *See Kamerstukken* II 2022/23, 29683 nr. 241.

Germany, and Denmark. Biodiversity does not inherently subscribe to the idea of human-made borders; thus, a Natureship grounded in EU law is a proposition that needs further exploration. An EU approach may tackle transboundary issues more effectively than a purely national one since the latter cannot reach the desired spatial scope nor guarantee uniform protection throughout all the concerned Member States. This paper will explore the merits of an EU approach to Natureships by engaging in a thought experiment, conceptualising how such an instrument may take shape at the EU level. It refers to the German, Dutch and Danish Wadden Sea as an example to reflect on the potential merits of this approach, when needed.

Overall, this will inform the question of whether an EU Natureship law may act as a 'remedy' for anthropocentrism within EU environmental law. As an ethos underpinning the law, anthropocentrism takes a human-centred approach to legislation. This is the antithesis of an EU Natureship. In contrast, an ecocentric ethos subscribes intrinsic value to nature as a collective. An ecocentric law, as such, provides a holistic perspective towards environmental protection, including non-human interests within the scope of consideration.[11] An EU Natureship, in essence, is a proposition aimed to achieve such holistic protection.

This paper hosts several methodologies to unpack the research statement as outlined above. The primary method deployed consists of doctrinal research, initially taking an 'internal' perspective of the legal system. However, from the normative premise that the law may be failing the environment, a critical analysis will be undertaken, exploring the possible routes ahead in order to close the perceived gap between law and ecology. This article will highlight anthropocentrism within modern-day EU environmental law in Section 2.1 and 2.2, thus analysing its failures. In the following Sections 3.1, 3.2 3.3 and 3.4, the concept of an EU Natureship is set out as a thought experiment, taking the Wadden Sea wetland as an example. In doing so, concrete provisions are suggested in the context of a (fictive) EU Natureship Regulation and/or Framework Directive. The paper ends with a brief conclusion, in Section 4, on the merits of such an EU-wide approach. It should be noted that this paper does not review international obligations derived from the Ramsar Convention, the UNESCO World Heritage Convention, or the Convention on Biological Diversity. Whilst international instruments are essential components of the legal framework that governs wetland protection, given the EU-specific proposition being put forward, the scope of this paper will primarily be limited to the *supranational*.

2. AN ECOCENTRIC ANALYSIS OF EU ENVIRONMENTAL LAW

2.1 THE ANTHROPOCENE CODIFIED WITHIN LAW

This section considers the question of the extent to which the ethos (i.e., the attitude) underpinning the law sustains anthropocentric notions, such as mastery over nature.[12] In short, it can be noted that, in part, EU environmental law finds its origins within the Enlightenment.[13] Methodology rooted in rationalism proved overwhelmingly successful in the natural sciences, which was taken to confirm the fundamentals of rational ideology: nature operates as a universal, rational order that can be understood through studying its individual elements.[14] Moreover, because nature is believed to function as a rational machine, it operates as the result of the sum of all individual segments that together constitute the rational system.[15] This is a reductive understanding of nature, casting the whole as a sum of individual parts. Rationalism and reductionism are the essences of what is typically referred to as Cartesian thought, named after the philosopher, René Descartes. As the law is the chief behavioural tool among humans,

11 See MC Petersman, 'Response-Abilities of Care in More-than-Human Worlds' (2021) 12 Journal of Human Rights and the Environment 102. One relevant criticism may be that the anthropomorphizing of nature and extending rights to it is problematic, as it relies on a human representation of the non-human world. However, it has to be put forward that the Rights of Nature approach, whilst still flawed in the eyes of some environmentalists, has the potential to enhance effective legal protection. Here, we argue that, since natural entities are unable to voice concerns *directly* within otherwise anthropocentric procedures, or within environmental management, relying on legal representatives tasked with maintaining the ecological integrity of a natural site strengthens ecological considerations in decision-making processes.

12 K Bastmeijer, 'Intergenerational Equity and the Antarctic Treaty System: Continued Efforts to Prevent Mastery' (2011) 3 The Yearbook of Polar Law Online 635.

13 F Capra and U Mattei, *The Ecology of Law* (Berrett-Koehler 2015).

14 ibid.

15 ibid.

it is meant to facilitate humankind's needs which were regarded as wholly rational.[16] This has led to environmental instruments that institutionalise a sense of 'mastery' over nature, a term frequently cited by Bastmeijer.[17]

The result of these beliefs can be observed today: attitudes towards nature are rooted within legal instruments and thus influence conservation policies and practices.[18] At present, the law has evolved – in part – towards 'stewardship,' which can be defined as an approach whereby humans care for nature but still hold significant power over it for an exploitative dimension to take hold. However, unlike mastery or stewardship, ecocentrism recognises nature's inherent value and limits as a systemic entity whose ecosystems, processes, and cycles are prone to disruption and destruction.[19] In contrast, ecocentrism views humanity as a participant within rather than a master outside, thus requiring a higher duty of care towards ecosystems, including non-human interests within the scope of consideration.[20] One important point should be stressed here: the link between EU environmental law's underlying ethos and its effectiveness is not entirely self-evident. In this regard, it can be put forward that an ecocentric law takes into account all fundamental aspects of biodiversity – from genetic diversity to ecosystem diversity to species richness – as it recognises the inherent value of these elements. Thus, EU environmental law's comprehensiveness may be a guiding principle by which to appraise the ethos of legislation.

2.2 A REFLECTION ON SHORTCOMINGS OF EU ENVIRONMENTAL LAW

This section sets out the premise that segments of EU environmental law cannot be perceived as fully 'ecocentric'. Various examples within EU secondary legislation support this claim. However, this should not be read as a fundamental attack on the merits of EU environmental law, as it has been essential in many conservation efforts throughout the EU. Instead, it holds EU law to a higher standard, as outlined in the introduction.[21]

First and foremost, the Habitats Directive – often referred to as the cornerstone of EU nature conservation law – seeks to conserve species and habitats of 'community interests' through specific areas and species protection provisions.[22] On first inspection, this conservation requirement is a textbook example of a legal instrument favouring stewardship (i.e., coexistence). Yet, the Directive also contains several ecological blind spots.[23] For example, the Directive creates an obligation for 'progressive improvement' to bring natural sites in line with a 'favourable conservation status' over time. An inherent problem in this context is that this improvement is – at best – derived from the ecological situation established in 1992.[24] Thus, the benchmark against which ecological damage is to be assessed is a minor blip on a historical scale. As such, the shifting baseline syndrome, whereby each generation takes a lesser view of the goals to be achieved in conservation policies, is legally mandated through the Directive. The Wadden Sea lost considerable amounts of flora and fauna prior to the year 1992 (from oyster beds to marine species), yet these considerations are not taken into consideration within the scope of the Habitats Directive.

16 A Bell and G Parchomovsky, 'Theory of Property' (2005) 90 Cornell Review 531; A. de Vries-Stotijn, I van Ham and K Bastmeijer, 'Protection Through Property: From Private to River-Held Rights' (2019) 44 Water International 736.

17 Bastmeijer (n 12).

18 H Somsen, 'The End of European Union Environmental Law: An Environmental Programme for the Anthropocene' in LJ Kotzé (ed), *Environmental Law and Governance for the Anthropocene* (Hart Publishing 2017) 357.

19 Bastmeijer (n 12).

20 ibid.

21 Not all possible criticism of EU environmental law can be discussed within the scope of this paper. Instruments are selected based on their potential relevance for the ecological status of the Wadden Sea.

22 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7.

23 Exposing these defects can be credited to Prof. Verschuuren; J Verschuuren, 'Restoration of Protected Lakes under Climate Change: What Legal Measures Are Needed to Help Biodiversity Adapt to the Changing Climate? The Case of Lake IJssel, Netherlands' (2019) 31(2) Colorado Natural Resources, Energy & Environmental Law Review 265; N Hoek, 'The Habitats Directive and Heath: The Strain of Climate Change and N Deposition' (2022) 31 European Energy and Environmental Law Review 41.

24 Y Epstein, 'Favourable Conservation Status for Species: Examining the Habitats Directive's Key Concept Through a Case Study of the Swedish Wolf' (2016) 2 Journal of Environmental Law 221.

A second pressing example of anthropocentrism within the Habitats Directive is the rigidity and limited capacity of its Annexes, in turn dividing up nature into *protected* and *unprotected bits*. In short, the Directive contains a plethora of Annexes that pertain to a limited degree of species and natural sites. These are, through their spot on the Annexes, subject to protection. However, the Annexes of the Directive are rarely updated and cannot be seen as adaptive: whole groups of species and habitat types are not included, leading to invertebrates and fungi receiving less protection and, crucially, less attention than charismatic mammals.[25] This impacts the Wadden Sea, as, for example, seals are better protected than the invisible – yet crucial – phytoplankton at the (literal) bottom of the ecosystem. Whilst more examples could be given, the Habitats Directive, in essence, fails to provide a holistic voice for nature that is able to adaptively incorporate ecological concerns raised over time.[26] In other words, a new listing and/or amendment of the Directive is a political, slow process, rather than an adaptive and ecological one.

The recently announced Proposal for an EU Nature Regulation has opened up a window to address the issues related to the Habitats Directive.[27] It introduces specific restoration targets for maritime areas, requiring them to be restored to a 'good condition' – set against a strict (upscaling) deadline – from 2030 to 2050. Additionally, it calls for obsolete barriers in floodplains to be removed, all of which may have (in)direct benefits for ecosystems such as the Wadden Sea, provided that the requirements are implemented correctly. However, criticisms have been voiced.[28] For example, the Proposal, like the Habitats Directive, lacks comprehensiveness and flexibility in its Annexes, with a very short, five-year mandate for the Commission to amend them.[29] Moreover, and perhaps crucially, the new Proposal does not change the fundamental actors involved: restoration measures are to be implemented by Member States within National Restoration Plans, leaving the critical assessment of these policies to the watchful eye of NGOs and the European Commission.[30] In other words, the Wadden Sea is to be restored by the same governments that have, so far, failed to meet previously formulated environmental obligations in relation to the existing Natura 2000 Network.[31]

More shortcomings can be noted. In the same breath, our attention may turn to the (native) marine populations under significant pressure due to the introduction of invasive alien species (IAS). IAS recorded in the Wadden Sea are increasing at a steady pace.[32] Corresponding risks have been identified by ecologists: these IAS can outcompete native species and disturb the balance of ecosystems, thus causing significant damage to the short- and long-term resilience of ecosystems.[33] In this regard, the EU Invasive Species Regulation – whilst being praised for its intention – is far from comprehensive and may be subjected to similar criticism as the Habitats Directive.[34] Indeed, the listing of additional species under the Regulation can – yet again – be accused of being a slow and political process.[35] For example, many of the invasive species that plague the Wadden Sea are *not* listed under the EU's Invasive Species Regulation – from

25 P Cardorso, 'Habitats Directive Species Lists: Urgent Need of Revision' (2011) 5 Insect Conservation and Diversity 169.

26 Hoek (n 23).

27 European Commission, 'Proposal for a Regulation of the European Parliament and of the Council Regulation of the European Parliament and Of the Council on Nature Restoration' COM/2022/304 final.

28 N Hoek, 'A Critical Analysis of the Proposed EU Regulation on Nature Restoration: Have the Problems Been Resolved?' (2022) 31 European Energy and Environmental Law Review 320.

29 ibid ; this mandate can be revoked at any time by the Council or Parliament.

30 ibid.

31 K Bastmeijer, 'De Waddenzee: Doen we Neerlands enige natuurlijke werelderfgoed voldoende recht?' (*Geografie*, 1 October 2021) <https://geografie.nl/artikel/de-waddenzee-doen-we-neerlands-enige-natuurlijke-werelderfgoed-voldoende-recht> accessed 2 April 2023.

32 NVWA, 'Native and Non-Native Species in the Dutch Wadden Sea' (2018) <https://www.nvwa.nl/documenten/dier/dieren-in-de-natuur/exoten/risicobeoordelingen/native-and-non-native-species-of-the-dutch-wadden-sea-2018> accessed 2 April 2023.

33 R Keller and others, 'Invasive Species in Europe: Ecology, Status, and Policy' (2011) 23 Environmental Sciences Europe 1.

34 Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species [2014] OJ L 317/33 at 35; P Genovesi, 'EU Adopts Innovative Legislation on Invasive Species: A Step towards a Global Response to Biological Invasions?' (2015) 17 Biological Invasions 1307.

35 ibid.

the American shell *Mulia Lateralis* to the seaweed *Ulvaria*.[36] This is further complicated by the fact that the management of these species, in practice, is not fully coherent between the Netherlands, Germany and Denmark.[37] Here, an ecocentric law ought to be able to quickly adapt to pressures on the ecosystem, identify the main threats, and act accordingly in a coordinated manner. Instead, the Committee of Member States' representatives responsible for updating the Annex to the EU's Invasive Alien Species Regulation is limited by political and economic considerations, rather than scientific ones.[38] This highlights the potential for anthropocentric arguments to prevail over the ecological integrity of natural habitats.

Another concern, in light of the need for ecological integrity, relates to fishing and the exploitation of 'marine resources'. The Maritime Planning Directive, which establishes a legally-binding framework for maritime spatial plans, stresses the interests of aquaculture and fishing areas *alongside* nature conservation.[39] Yet, in practice, balancing these interests has proved to be difficult. Fishing and harvesting marine species, such as mussels or cockle fishery, is deemed a threat to the Wadden Sea ecosystem, whilst the management of fisheries greatly differs between the Dutch, German and Danish parts of the Wadden Sea.[40] This fragmentation in governance is a cause for concern. On a similar note, the EU Common Fisheries Policy (CFP) is often viewed as problematic from the perspective of ecological sustainability. One key element of the CFP is that each Member State is granted a 'total annual catch'.[41] This creates a system of unrestricted access for national vessels and, as a result, the market price for fish reflects the short-term willingness of consumers.[42] In other words, the ecological value of the fish is disregarded in this economic market paradigm – exacerbated by a general incentive for fishers to invest in greater catches to claim a more significant share of the national maximum allowed catch. As a result, a disruption to fish populations in EU waters, according to studies, is likely to remain.[43]

Lastly, in light of the special status of the Wadden Sea as a tidal wetland connected to the North Sea, the Marine Strategy Framework Directive (MSFD) is a relevant consideration.[44] The MSFD is to guide maritime policy in the EU, aiming to take action to bring marine habitats to a 'good ecological status by 2020'.[45] As per Article 5(1) of this Directive, Member States must formulate strategies for their marine waters to conserve and restore their ecological integrity. However, studies have identified several problems. Economic considerations (such as cost-effectiveness and cost-benefit analyses) have been crucial in developing these strategies, as the Directive requires this. In this regard, the Directive allows Member States to 'disregard measures with a high cost', thereby walking the path of least resistance.[46] Moreover, the environmental valuation needed to arrive at a national strategy, in turn, takes an anthropocentric view and is often 'based on people's preferences for ecosystem services'. In other words, benefits and/or values assigned to ecosystem services are primarily defined through the lens of human needs.

36 Commission Implementing Regulation (EU) 2022/1203 of 12 July 2022 amending Implementing Regulation (EU) 2016/1141 to update the list of invasive alien species of Union concern [2022] OJ L186/10 OJ L 186/10; NVWA (n 30).

37 UNESCO World Heritage, 'Wadden Sea Quality Status Report: National Marine Alien Species Monitoring Programs' (2017) <https://qsr.waddensea-worldheritage.org/annex-alien-species> accessed 2 April 2023.

38 ibid.

39 Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning OJ L 257/135.

40 J Baer and others, 'Wadden Sea Quality Status Report: Fisheries' (*CWSS*, 2017) <https://qsr.waddensea-worldheritage.org/reports/fisheries> accessed 2 April 2023.

41 Regulation (EU) 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) 1954/2003 and (EC) 1224/2009 and repealing Council Regulations (EC) 2371/2002 and (EC) 639/2004 and Council Decision 2004/585/EC [2013] OJ L354/22.

42 S Khalilian and others, 'Designed for Failure: A Critique of the Common Fisheries Policy of the European Union' (2010) 34 Marine Policy 1178.

43 M Harte and others, 'Countering A Climate of Instability: The Future of Relative Stability Under the Common Fisheries Policy' (2019) 76 ICES Journal of Marine Science 1951; Ragnar Arnason, 'Global Warming: New Challenges for the Common Fisheries Policy?' (2012) 70 Ocean & Coastal Management 4.

44 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) [2008] OJ L 164/19.

45 Whether this has been achieved (and maintained), is context-specific and dependent on the maritime zone in question.

46 C Bertram and K Rehdanz, 'On the Environmental Effectiveness of the EU Marine Strategy Framework Directive' (2013) 38 Marine Policy 25.

Moreover, these strategies have been found to neglect benefits *beyond* national territories, which is a problem due to the transboundary nature of marine habitats.[47] In other words, whilst the instrument does pay attention to 'non-use values' such as 'cultural benefits of maritime habitats', it cannot be deemed to be ecocentric, due to the reasons outlined above.

In sum, the conclusion can be drawn that parts of EU environmental law and policy have failed to apply a holistic and comprehensive perspective that recognises the intrinsic value of biodiversity – from species richness to ecosystem diversity. Overarching trends that can be observed are the persisting *rigidity* of instruments, on the one hand, and prevailing economic and or political short-term interests, on the other. This dilutes the claim to 'ecocentrism' as an underlying ethos within EU environmental law, at least in relation to the instruments studied. Additionally, it can be argued that 'ecological holes' within EU legislation have complicated the perils of the Wadden Sea. These problems, in turn, have been worsened by the 'implementation crisis' of many relevant EU environmental instruments. The enforcement of environmental norms is, thus, increasingly important, as it determines, to a great extent, the effectiveness of the law on the ground. In this regard, the following Section 2.3 will reflect on the standing issues within EU law, this being a vital issue when actors (from grassroots organisations to well-established NGOs) deem it necessary to correct inadequate implementation of EU environmental legislation within EU courts.

2.3 OBSTACLES WITH RESPECT TO 'THE VOICE FOR NATURE' WITHIN THE EU

This section does not seek to portray standing requirements as *the* single obstacle holding back biodiversity conservation. Doing so would not do justice to the importance of environmental management and, in turn, the substantive content of environmental instruments, as outlined in the previous Section. Instead, the aim of this Section is twofold. First, it seeks to comprehend the issues for civil society and other relevant actors to obtain standing in EU courts when they challenge acts that, in their view, may harm the environment. And second, the goal is to appraise whether there is a need for an update to this system from the perspective of securing an effective 'legal voice' for nature (or, more especially, a voice for areas such as the Wadden Sea).

It can be noted that, currently, procedures involving environmental disputes are primarily brought before courts by NGOs, within the 27 Member States. Under the Aarhus Convention, national courts must respect the rights of individuals and NGOs to review procedures when their rights to information and/or public participation have been violated.[48] For example, in its preliminary ruling in *Varkens in Nood*, the CJEU held that organisations which have failed to participate in the preparatory procedure to the contested decision could not, on this basis alone, be denied admissibility to further judicial proceedings.[49] Here, it is relevant to note that the Aarhus Convention is implemented in the EU through the Aarhus Regulation, amended in 2021.[50] This amendment aimed to strengthen the EU's system of access to justice and further relaxed standing requirements for NGOs in environmental cases. The most crucial development in this context is that NGOs can now challenge the EU institutions' administrative acts when they deem that these acts violate EU environmental law without having to show *individual* and *direct* concern.[51] Instead, NGOs should meet specific criteria relating, inter alia, to the length of time that they have been established. In principle, this entails an obligation for courts to set aside rules which are contrary to this.[52]

One crucial point is that the 2021 amendment to the Aarhus Regulation improves access to justice at the *supranational* level, rather than the national level. This is partly because Member States are hesitant to accept supranational intervention in relation to national procedural rules.

47 ibid.

48 See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (25 June 1998) 2161 UNTS 447 (Aarhus Convention) Arts. 6 and 9.

49 Case C–826/18 *Varkens in Nood* [2021] ECLI:EU:C:2021:7, para. 69.

50 Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13.

51 ibid ; see Art 2(1)(g) of the Amended Aarhus Regulation.

52 I Hadjiyianni, 'Access to Justice in Environmental Matters in the EU Legal Order – Too little too late?' (4 November 2020) <https://europeanlawblog.eu/2020/11/04/access-to-justice-in-environmental-matters-in-the-eu-legal-order-too-little-too-late/> accessed 2 April 2023.

In this regard, it must be conceded that, on this sensitive topic, further reforms may be difficult to achieve within the EU's political economy. However, whilst the developments, as discussed above, improve the access of NGOs to EU courts, they do not resolve a fundamental problem within the modern-day EU legal system. That is, the 'implementation crisis' is difficult to resolve *without* an effective judicial counterbalance to challenge government inaction. In the present situation, a heavy burden falls on NGOs (and the general public) to argue as a voice for nature should this need arise. This is especially true given that the European Commission is reluctant to intervene on a regular basis through infringement procedures. In other words, the 'guardians of the treaty' have not performed as required (or expected).[53] Nevertheless, the reliance on NGOs can be deemed problematic at times. Whilst NGOs consist of skilled and knowledgeable people, limited resources and/or legal expertise may be a hurdle in acting as a voice for the environment. Therefore, there is much to be gained by invoking a novel approach to standing in the form of an EU Natureship.

The following Sections will review the possibility of an EU Natureship, which, on the one hand, grants legal personality to natural sites such as the Wadden Sea and, on the other hand, provides *substantive* and *procedural* rights to such entities. In light of the ecological crisis within the EU, one may engage in a thought experiment that attempts to resolve the fundamental issues plaguing adequate environmental protection, by shifting the law, and the possible legal representation of nature, from the *anthropocentric* to the *ecocentric*.

3. CONSTRUCTING EU NATURESHIPS: A THOUGHT EXPERIMENT

3.1 INTRODUCING THE CONCEPT OF EU 'NATURESHIPS'

Inspired by the *Rights of Nature* movement and the Dutch Natureship proposed by Lambooy and others, the sections 3.2, 3.3 and 3.4 engage with the construct of an 'EU Natureship'.[54] It must be stressed that this instrument is constructed by the authors of this paper and holds no legal value. Instead, the following sections conceptualise how such an instrument might take shape, formulating specific provisions regarding the EU Natureship. To reiterate, the term 'Natureship' can be defined as a public institution and a legal person, geographically and functionally defined.[55] The EU Natureship, in turn, could be charged with maintaining the ecological integrity of the Dutch, Danish and German Wadden Sea entity and could be deployed throughout the EU, when deemed appropriate.

Before proceeding any further, it is essential to consider the legal basis on which the proposed instrument could be adopted and the form it ought to take. The EU's environmental policy is rooted in the objective set out in Article 191 TFEU.[56] This provision details EU policy aimed at 'preserving, protecting and improving' the quality of the environment. Specifically, the EU legislative competence shared with the Member States in environmental law is vested in Article 4 TFEU and further expressed in Article 192 TFEU. Considering the environmental objectives in Article 191 TFEU, and the relevance for land-use, the EU legislature may act on the basis of Article 192 (2) TFEU, following the special legislative procedure.

The Natureship could come in two shapes, whereby one is more feasible than the other. First, an EU Regulation could serve as a tool for the creation of EU Natureships. Indeed, an EU Natureship Regulation may be preferred over a Directive to achieve uniformity and coherence throughout the EU. For example, the recently published proposal for an EU Nature Restoration law subscribes to this reasoning within its preambular paragraphs, as a Regulation is *directly effective* within the legal order of Member States (Article 288 TFEU).[57] In contrast, a Directive must first be transposed to the national legal order, which may be an obstacle to achieving uniform environmental protection. However, it must be admitted that the concept of EU Natureships touches on sensitive constitutional and administrative matters. Therefore, a Framework Directive may be more suitable to afford a degree of discretion and/or flexibility to Member States that seek to cooperate, providing a forum to establish transboundary Natureships.

53 R D Kelemen and T Pavone, 'Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union' [2021] SSRN Electronic Journal 1.

54 Lambooy and others (n 5).

55 ibid.

56 Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47.

57 Hoek (n 26).

Relevant in the context of this envisaged Framework Directive is that the principles of subsidiarity and proportionality will have to be considered.[58] Namely, the Framework Directive ought to strike a balance between the means used and the intended aim, and it will have to be established that the issue cannot be regulated more effectively at the national level. Here, it should be noted that these principles have, in practice, not been a hindrance to adopting environmental legislation. This is because nature conservation cannot be achieved effectively on the Member State level, as natural habitats (and biodiversity) are inherently transboundary, both because of the migration of species and the fact that various natural habitats overlap. Moreover, the current ecological crisis in Europe, and the rapid decay of the remaining biodiversity, may provide sufficient grounds to establish the proportionality of such a robust measure.

3.2 THE ESTABLISHMENT OF AN EU NATURESHIP AND FORMAL REPRESENTATION

In the previous section 3.1, the idea of an EU Natureship Framework Directive was proposed. However, this left open several complex questions, including the *selection criteria* to be utilised for natural habitats to be governed under this instrument. In this context, it is necessary to develop criteria that give rise to circumstances in which enlistment may be considered, to better conserve vulnerable natural areas (such as the listed Natura 2000 sites). The Framework Directive should, in any case, offer the Member States the option to expand the list of nature sites. A clear link may be established with other areas of EU environmental law, which may improve consistency between various legal instruments. For example, the Natura 2000 network under the Birds – and the Habitats Directives can be deemed automatically considered eligible for legal personhood. Alternatively, those sites could be subject to more flexible criteria.

This raises an issue concerning transboundary natural habitats whose respective location is found within the territory of multiple Member States, such as the Wadden Sea. In the context of the proposed Directive, the following model provision takes into account issues on sovereignty and transboundary governance, whilst equally keeping ecological connectivity in mind. Such a model might be a central part of the EU Natureship:

1. Natura 2000 may be granted Natureship status at the discretion of the Member States. Special attention should be paid to the proximity of Natura 2000 sites, as bordering sites can merge into single Natureships provided there is sufficient ecological connectivity between those Natura 2000 sites.
2. The threatened natural habitats, defined in Annex I, shall be considered by the relevant Member States to be enlisted as EU Natureships under this Framework. This list shall be updated by an ecological committee of the Member States.
3. Additional EU Natureships can be nominated by one Member State or multiple Member States, provided there is a territorial claim over a natural habitat. If the natural habitat lies within the territory of multiple Member States, negotiation shall take place regarding the geographical borders of the EU Natureship.

A few key elements require further attention. In line with the above, the occurrence of rare or threatened species of flora and fauna may be considered a criterion that gives rise to Natureship eligibility. One suggestion is to incorporate a separate Annex with *severely threatened habitats*, for which immediate action needs to be taken. In this regard, the European Red List of Habitats might be a starting point for negotiations.[59] Additionally, this Annex could be formed based on reports conducted by independent ecological institutions on a continuous basis, to comply with the principle of adaptive management. This principle entails creating a system that can morph and adapt to accommodate ecological change 'on the ground' when needed. Here, the Dutch, German and Danish Wadden Sea might be included upon the recommendation of an independent committee, whilst respecting the discretion of those Member States to make the final call with respect to the listing. In the end, this reflects the need to establish a stable and transboundary union of environmental governance for the Wadden Sea, while keeping in mind the sensitive constitutional and administrative considerations underlying a potential EU Natureship.

58 See Art. 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

59 European Commission, 'European Red List of Habitats' <https://ec.europa.eu/environment/nature/knowledge/redlist_en.htm> accessed 2 April 2023.

Once natural habitats have been selected, a logical follow-up question is *who precisely* may speak on behalf of an EU Natureship. In this regard, the Directive should set out which representatives have this authority and, equally, who can take decisions with respect to environmental governance and/or management of the EU Natureship. This explicit voice for nature might be a crucial strength compared to the present situation. The following template for a legal provision is proposed to facilitate fair representation:

1. The Board of the Natureship is tasked with maintaining the ecological integrity of the natural site. Each Senior Member may serve for a period of ten years.
2. Formal representation of the Natureship shall consist of:
   (a). local residents who reside within the vicinity of the natural site. A residence requirement of five years minimum is applicable;
   (b). government officials and representatives of the respective Member States;
   (c). ecological experts, scientists and lawyers who have significant knowledge of the sound governance of nature.
3. Formal representatives shall be elected, adhering to the principles of public participation as set out in the Aarhus Convention and subsequent Aarhus Regulation.
4. A formal representative is required to remain impartial, in line with the principles of transparency and good governance, and shall act in the ecological interests of the natural habitat.

The above is inspired by the case of Lake Mar Menor in Spain, where the proposal for 'rights for the lake' called for representatives ranging from public administration representatives, local citizens, and a scientific commission.[60] A vital strength of the provision, as formulated above, is that it establishes a transparent, new actor that sets out to maintain the ecological integrity of the natural site and, thus, lifts the burden from Member States, NGOs, or the EU Commission regarding the enforcement and implementation of environmental legislation. Following this approach, the Wadden Sea and many other natural habitats can benefit from legal representation similar to that granted to States, companies, or other institutions. Additionally, within the EU Natureship, national interests may be recognised through governmental participation within the Framework, *alongside* the voice of other actors. Thus, the above should be read as a provision which focuses on bottom-up representation, with a vital role for local residents. This representation may be strengthened through linkages with related EU environmental legislation, providing the general public with influence over the selection of the Natureship and/or appointment of the formal representatives. For example, in the case of the Wadden Sea, the Maritime Spatial Planning Directive provides entry points for public participation for the general public, *beyond* the limited pool of actors who directly govern the Natureship.[61]

In sum, two concrete propositions have been made with respect to the functional and geographical aspects of the EU Natureship. The Wadden Sea could benefit from this status: citizens from Dutch Groningen to Danish Jutland may have a say in its transboundary governance, from the starting point of maintaining its *ecological integrity*. However, adequate procedural safeguards are equally relevant to the ultimate success of this representative body, and this will be the subject of the following Section.

3.3 PROCEDURAL RIGHTS: THE RIGHT TO STANDING IN AN EU NATURESHIP

The formal legal representatives of the Natureship may seek to challenge decisions with a negative environmental impact in national courts. Therefore, the EU Natureship Framework Directive ought to establish clarity with respect to standing rules for EU Natureships. However, as set out in Section 2.3, this is a complex and sensitive proposition within the current political economy of the EU. Therefore, the following provision is proposed that balances the need for 'access to justice' alongside the need for procedural autonomy within a national context.

60 See e.g., Ley 2022 de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca, BOE 2022, 135131.

61 Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning *OJ L 257, 28.8.2014, p. 135–145* ; See e.g., Art. 9 of the Maritime Spatial Planning Directive.

1. An EU Natureship shall have legal personhood.
2. A Natureship shall have the right to stand before the courts of the European Union in conformity with the provisions of Article 263 TFEU and the Aarhus Regulation.
3. A Natureship may have the right to stand before the courts of Member States, in line with the procedural requirements of the Member States. When Member States subject Natureships to limitations with respect to standing, in accordance with the principle of National Procedural Autonomy (NAP), these limitations shall adhere to the principles of effectiveness and equivalence.

This balance, alluded to at the start of this section, may be achieved because, on the one hand, the Natureship is granted legal personhood, providing it access to courts when its geographical or functional area has been harmed. However, on the other hand, the Member States retain the ability to formulate national procedural rules, provided they do not treat the EU Natureship *less favourably* than national entities (in line with the principle of equivalence).[62] Additionally, Member States cannot adopt procedural rules that would make the exercise of EU rights 'excessively difficult' (in line with the principle of effectiveness).[63]

In sum, it can be argued that the model EU law, as outlined above, provides a significant benefit compared with a national Natureship, which might be considered to be an alien construction in many legal systems and could thus be met with resistance in non-EU courts in the event of transboundary environmental harm or pollution. For example, should there be an (accidental) oil spill in the Wadden Sea, the Natureship might instigate legal action in the respective Member States, provided it complies with the national procedural rules of the Netherlands, Denmark and Germany.[64] Additionally, legal personhood may allow the Wadden Sea to conclude agreements and *conservation covenants* with external partners on *its own behalf*.[65] While this approach may seem unconventional at first, it is in many ways fundamentally comparable to the legal personality of a company, individual and/or institution.

3.4 THE SUBSTANTIVE RIGHTS CORRESPONDING WITH EU NATURESHIPS

This paper proposes that the creation of an EU Natureship Framework Directive should coincide with the assignment of substantive rights to this Natureship, in order to guarantee effective protection of the natural site. In other words, these rights provide the formal representatives (discussed in the previous section 3.2) with additional tools and safeguards in environmental governance and management. Potential synergies may be found through existing norms within EU environmental law. For example, the Natureship could be deployed to further implement and guarantee compliance with the deterioration prohibition, set out in Article 6 (2) of the Habitats Directive. A few possible examples are discussed within this setting, and the following concrete provisions are proposed.

> (Preambular paragraph) This Framework acts as a starting point for negotiations between Member States on EU Natureships and the concession of ownership to such an institution. Member States are encouraged to conclude agreements to reflect the need to establish a long-term and durable approach to the ecological health of the Natureship, in the form of property protection. Upon the listing of an EU Natureship, these matters may be considered by the relevant parties in question. If no private agreement is achieved, this matter should be (re)evaluated on a continuous basis to verify the effective functioning of an EU Natureship that lacks such property rights.

1. A Natureship shall have the right to ecosystem integrity. Ecosystem integrity entails the long-term ability of an ecosystem to sustain a dynamic complex of plant, animal, and micro-organism communities interacting as a functional unit. The variability amongst living organisms from all types and the ecological complexes of which they are part are included within this paradigm.

62 See Arts 4(3) and 19(1) of the TFEU. K Lenaerts, 'National Remedies for Private Parties in Light of the EU Law Principles of Equivalence and Effectiveness' (13) 46 Irish Jurist 2011.

63 Arts 4(3) and 19(1) of the TFEU.

64 'Duizenden Liters Olie Drijven Richting de Waddenzee' *BNNVARA* (2019) <https://www.bnnvara.nl/vroegevogels/artikelen/duizenden-liters-olie-drijven-richting-de-waddenzee>. accessed 2 March 2023.

65 The Conservation Covenants have been developed by de Vries. See A de Vries and others (n 16).

2. Acts considered to have negligible impact shall be listed as permissible by the formal representatives to accommodate low-impact human activities. These activities must be in line with the precautionary principle.
3. The right to ecosystem integrity shall take into account the cumulative impact of human activities. The formal representatives shall monitor the live impact of activities.
4. A Natureship shall have the right to restoration, which means to reintroduce or repair parts of the ecosystem historically lost as a direct or indirect result of human interference. This right shall only be granted once ecological impact assessments (EIA) verify its feasibility.

The above is a provision which takes a *strict approach* to conservation. In part, the right to ecological integrity is inspired by Article 2 of the Convention on Biological Diversity, which defines ecosystems and biodiversity as a 'dynamic complex' and a 'unit' to be sustained in the long term.[66] In the context of an EU Natureship, the right to ecosystem integrity would implement various targets of the recently adopted Kunming-Montreal Global Biodiversity Framework.[67] One example here is target 3, which calls for Contracting Parties to:

> ensure and enable that by 2030, at least 30 per cent of terrestrial, inland water, and of coastal and marine areas are (...) effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures.

Whilst the right to ecosystem integrity may be criticised as 'overly ambitious', it has to be stressed that such a provision (within the EU Natureship) would not be the first of its kind. Indeed, an example of an expressly formulated right to integrity for nature can be found in the constitution of Ecuador, Article 71, which states that:

> Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.[68]

Similarly, a formulation of the right to integrity can be found in the IUCN World Declaration on the Environmental Rule of Law, which reads that nature has an 'inherent right to exist, thrive, and evolve'.[69] Thus, the EU Natureship does not have to reinvent the wheel. In contrast, it can borrow from pre-existing ontological views and epistemologies. Moreover, it ought to be noted that the provision contained within the EU Natureship does open up the possibility for low-impact human activities, which is to be determined by the formal representatives of the Natureship on a case-by-case basis. For example, one could permit ecotourism whilst rejecting bottom trawling within the Wadden Sea in the interpretation of this provision. The Natureship itself could establish (based on ecological reports) to what extent the minimum threshold of 'ecosystem integrity' has been met, aiding the interpretation of this otherwise abstract norm.

A few words also need to be said about the *right to restoration* granted to the EU Natureship. The incidental or accidental destruction of the territory managed by an EU Natureship may be met with a legal requirement for immediate restoration measures paid for by those who have caused the damage, in line with the polluter pays principle.[70] However, this notion immediately raises the issue of which *baseline* should be taken for such a right to hold merit. For example, the Wadden Sea has seen human influence over hundreds of years, from overfishing to dyke management. The area can, in part, be seen as a natural and cultural site.[71] Whilst this fact complicates restoration, the *historical perspective* within the EU Natureship invites an approach that looks beyond the span of one generation in nature management. In the 1900s, oyster beds vanished

66 Convention on Biological Diversity (1992) 31 ILM 818.

67 Decision on the adoption of the Kunming-Montreal Global Biodiversity Framework (2022) CBD/COP/15/L25.

68 CDER, 'Rights of Nature Law Library: Local, State, And National Laws and Constitutional Frameworks' <https://www.centerforenvironmentalrights.org/rights-of-nature-law-library>. accessed 28 March 2023.

69 IUCN, 'World Declaration on the Environmental Rule of Law' <https://www.iucn.org/our-union/commissions/world-commission-environmental-law/our-work/history/foundational-documents-4> accessed 2 April 2023.

70 Art. 191 of the Treaty of the Functioning of the European Union (TFEU).

71 D Koren, L Egberts and M Schroor, *Waddenland Outstanding. History, Landscape and Cultural Heritage of the Wadden Sea Region* (Amsterdam University Press 2018).

from the Wadden Sea due to overexploitation.[72] However, the reintroduction of oyster beds is a restoration measure which might be covered by a new legal framework as laid out above. Thus, a significant benefit of the EU Natureship lies in the potential for a more holistic approach to nature management. Additionally, an EU Natureship may be more effective for overseeing and incorporating transboundary and cumulative problems, simply because it shifts management from the *local* to the *regional*, incorporating broader ecosystem benefits within its assessment.

Lastly, an EU Natureship might transform nature management from a task subject to political instability to a task potentially carried out by the body itself. To elaborate on this point, one major issue in environmental management is that a radical change of political wind (from 'green' to 'grey' governments) may end up permanently damaging natural sites, taking multiple governmental cycles to rebuild (or re-wild) any environmental damage that had occurred. This reflects the problems of short-term priorities in election cycles. For example, an NGO study in 2021 highlighted that 82% of Dutch people agree that nature conservation should be a strong priority.[73] However, a significantly smaller part of the population votes for parties that prioritise this objective, because of the perceived importance of other topics. Here, a right to property could establish stability within an EU Natureship *despite* the outcomes of short-term election cycles, since everyone has the right to 'own, use, dispose of and bequeath his or her lawfully acquired possessions'.[74] Property rights would, in turn, allow the Natureship to establish long-term and durable conservation goals. One complexity in this regard is that the EU has no competence with respect to the system of private property rights, this being a matter reserved for the Member States, as set out by Article 345 of the TFEU. This inherently limits the EU's integration and harmonisation of environmental objectives. Therefore, the Framework Directive may, at best, act as a *starting point* for separate negotiations. Whilst the allocation of property rights to a Natureship may be highly contested, this difficulty may be worth overcoming to provide durable protection for natural sites of crucial importance.[75]

4. CONCLUSION: FROM ANTHROPOCENTRISM TO ECOCENTRISM?

This paper has researched how a (fictive) EU Natureship Framework Directive might address the issues within EU environmental law, shifting the laws towards an ecocentric approach. In this context, the Wadden Sea – a tidal wetland subject to the territory of three distinct Member States – has served as an example. This natural habitat is under severe pressure. As identified by Beusekom and others, the natural site requires significant work to be brought back to a good ecological status:

> Little attention has been given up to now to understand regional differences within the international Wadden Sea. This is a challenge to the Wadden Sea scientific community and requires a North Sea view on the Wadden Sea. This knowledge is prerequisite for a harmonised Wadden Sea management. (...) Management should focus on adaptations to supra-regional and global change by re-introducing lost species, restoring habitat diversity along developed shorelines, considering sand nourishments to improve sediment balances in the face of sea level rise and raising awareness for the need of adjusting lifestyles to thriving coastal ecosystems.[76]

The existing EU environmental legislation, as of 2023, has not been able to achieve the objectives outlined by Beusekom. In part, anthropocentric notions embedded in instruments such as the Habitats Directive and the Marine Strategy Framework Directive may be to blame for this conclusion, alongside the 'implementation crisis' whereby Member States are failing to meet formulated targets. That is why this paper has put forward a concrete proposition for an EU Natureship Framework Directive that implements the rights of nature movement.

72 E Folmer and others, 'Wadden Sea Quality Status Report: Beds of Blue Mussels and Pacific Oysters' (CWSS 2017) <https://qsr.waddensea-worldheritage.org/reports/beds-blue-mussels-and-pacific-oysters> accessed 3 April 2023.

73 Vogelbescherming Nederland, 'Een Publieksonderzoek naar het Belang van Natuur tijdens de Coronacrisis in Nederland' (2020) <https://www.vogelbescherming.nl/docs/fda01576-a9e9-4f2e-991f-bb3cfd3994a4.pdf> accessed 2 April 2023.

74 See the definition as found in Art 17, Charter of Fundamental Rights of the European Union OJ C326/391.

75 Additionally, it may be noted that such complexity might further strengthen the case for a Natureship Framework Directive rather than a Regulation.

76 J Beusekom, C Buschbaum and K Reise, 'Wadden Sea Tidal Basins and the Mediating Role of the North Sea in Ecological Processes: Scaling up of Management?' (2012) 68 Ocean & Coastal Management 69.

However, this paper does not mean to oversimplify or undermine the complexities of this approach. Several hurdles remain. For example, it is unclear how an EU Natureship would relate to non-EU States when harmful activities reach *outside* the EU's common maritime spaces, as such States might not recognise the Natureship.[77] Additionally, due to the ecocentric, and thus ambitious, nature of this proposition, there may be pushback from Member States on crucial issues which enter the realm of 'traditionally national' topics, from standing requirements to the allocation of property rights. Furthermore, opponents of the EU Natureship may argue that the shortcomings of EU environmental law are better addressed from a 'classical' perspective, by updating existing instruments. The EU's Proposal for a Nature Restoration Law is one example in this regard. Lastly, as with any legal person, the adoption of an EU Natureship has implications in various areas of law, such as tort, tax, and contract law. The way in which an EU Natureship, as a legal person, is governed by those laws is crucial in determining the ultimate success of this paper's approach.[78] There is a need for additional research in this regard.

However, despite these reflections, it must be granted that the suggested approach provides a paradigm shift in the law. The ecological crisis in Europe appears to justify a robust regulatory intervention. In this sense, this paper has highlighted that an EU Natureship hosts significant procedural and substantive benefits in the realm of environmental management and access to justice whilst strengthening requirements on, e.g., the need for ecological integrity. Moreover, an EU Natureship shifts management from the local to the regional, incorporating transboundary ecosystem benefits within otherwise anthropocentric decision-making procedures. A vital benefit of the EU Natureship is that it requires coordination amongst the various Member States, alongside legal recognition within the courts of all 27 Member States. Another strength of this approach is that, due to the fact that the EU Natureship grants a voice to nature through a formal presentation, its design does not rest on the ability and willingness of NGOs or individuals to voice ecological concerns within the various courts of the EU Member States. Additionally, an EU Natureship may be better suited to take on complex cumulative and transboundary issues within environmental management compared with traditional instruments, which, in their implementation, are too often limited by short-term and economic considerations of Member States. In this regard, an EU Natureship Framework Directive may introduce an *ecocentric* approach towards nature conservation, whereby non-human interests are well-represented both 'on the ground' and 'in the courts'.

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Eline Janssen – Views expressed in this paper are made in a personal capacity.

77 The EU Natureship, as proposed, will be limited to the common maritime spaces of the Member States. Whilst this geographical and functional scope, in most cases, may be sufficient, the governance of maritime areas beyond national jurisdiction remains a crucial topic yet to be addressed. See, e.g. A Oude Elferink, 'Governance Principles for Areas beyond National Jurisdiction' [2012] International Journal of Marine and Coastal Law 205.

78 For example, in the case of corruption and/or of malpractice of the legal representatives, board liability of the EU Natureship will be of vital importance.

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