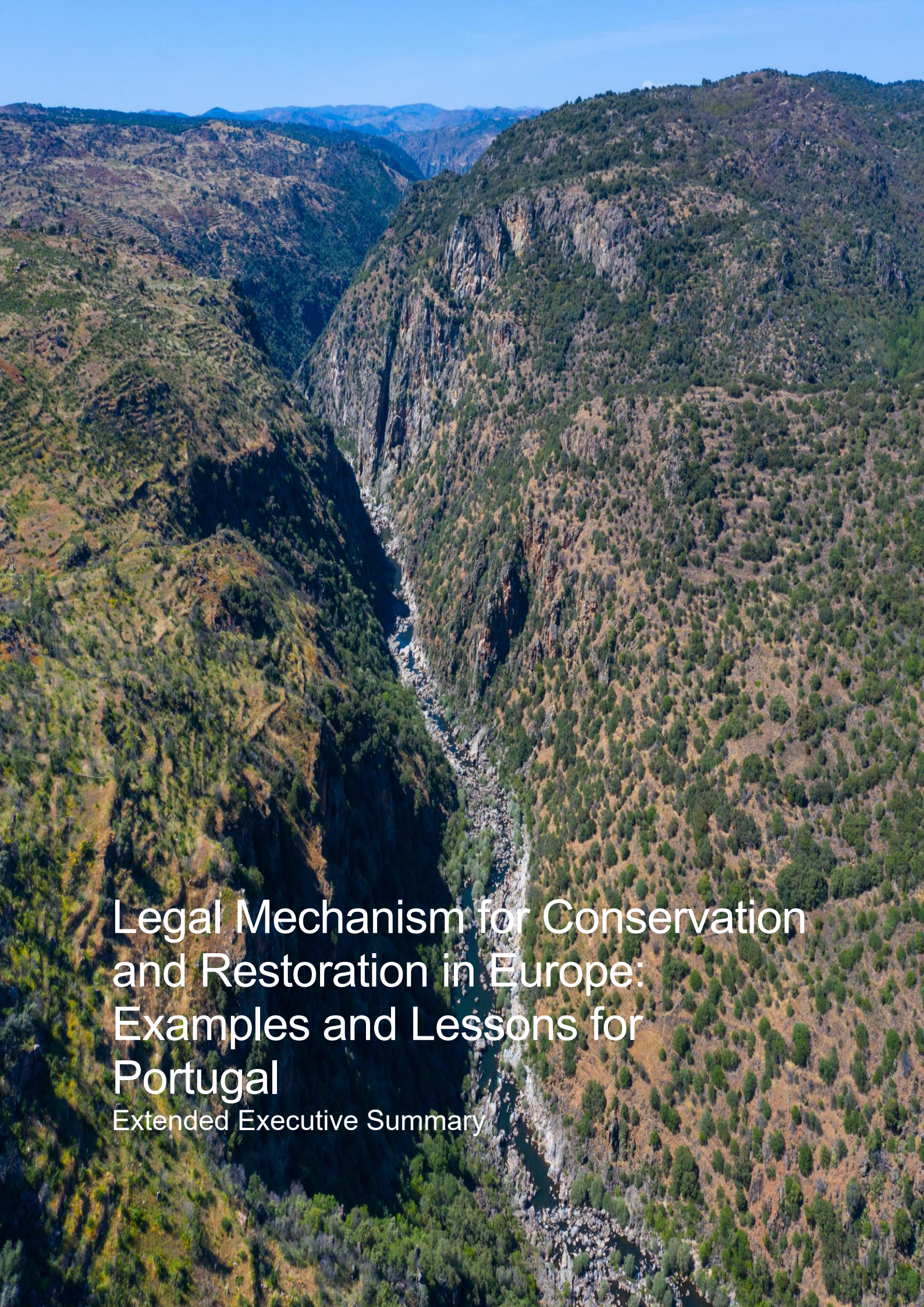




Legal Mechanism for Conservation and Restoration in Europe: Examples and Lessons for Portugal

Extended Executive Summary

**Legal Mechanism for Conservation and Restoration in Europe:
Examples and Lessons for Portugal (Extended Executive Summary)**

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SUMMARY

This project examines whether Portuguese law could support a dedicated legal mechanism capable of securing private long-term conservation and restoration commitments over land, and, if so, how such a mechanism could be designed in a way that it is legally robust, workable in practice, and adapted to the Portuguese legal system.

The research suggests that Portugal would benefit from a dedicated, purpose-specific, registrable mechanism created through a new statute, rather than continued reliance on existing legal tools alone. The overall key recommendation is the creation of a new legislative framework that would allow long-term land stewardship commitments to remain effective over time, including when ownership changes, whilst operating alongside existing public law conservation and land use regimes.

The comparative analysis of England, Scotland, France, the Netherlands, and Catalonia also shows that a legislative solution alone is unlikely to be enough. If a mechanism of this kind is to be used in practice, it is likely to need support through appropriate financial or fiscal measures and implementation tools such as guidance, model documentation, or trusted intermediary actors. The research also suggests that, whilst broader incentives can be developed in time, the statute itself could include targeted measures to reduce the up-front costs of creating and registering the mechanism.

This report is intended to support early policy thinking, advocacy work, and discussions with Portuguese lawyers and institutions who may later be involved in developing the statutory proposal.

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1. Why this project matters

Biodiversity loss, ecosystem degradation, climate change, and increasing pressures on natural resources remain among the defining environmental challenges of our time.¹ In Portugal, these challenges cannot be addressed through public regulation alone. Large areas of ecologically valuable land lie outside protected areas, much of it privately owned and used for agriculture or forestry. Supporting long-term conservation and restoration in these areas requires legal tools that go beyond traditional regulation and help secure durable land stewardship.²

The project began from the comparative idea of “conservation easements”³, understood broadly as legal tools designed to secure long-term conservation commitments over land and preserve their effect over time, including when ownership changes. However, the initial research showed that the European mechanisms do not simply reproduce the original concept. In addition, in Portugal, “easement” has a particular legal definition as the burden imposed on a property for the exclusive benefit of another property belonging to a different owner.⁴ This means that the Portuguese pathway for a “conservation easement” was unlikely to involve a direct transplant of that concept but would instead require a distinct mechanism adapted to Portuguese law.

Portugal already has a number of legal tools that may support private conservation in particular cases. These include private protected areas, contracts, ownership transfers, easements, and superficies rights. However, the research suggests that none of these, on their own, provides a coherent framework capable of combining voluntary agreement, continuity over time, and durable effect over land in the way that long-term conservation and restoration may require. This is why the project focused on the possible design of a dedicated conservation mechanism for Portugal.

The broader Portuguese constitutional and environmental framework already appears compatible with such development.⁵ The issue is therefore less whether Portugal can have such a mechanism, and more how it should be designed so that it works well in practice and fits coherently with the rest of Portuguese law.

2. What the project examined

The project combined three main strands of work.⁶

First, we undertook a comparative analysis of five European mechanisms capable of supporting long-term conservation commitments over land: English conservation covenants; Scottish conservation burdens; French *obligations réelles environnementales* (OREs), Dutch *kwalitatieve verbintenissen* (KVs), and Catalan *acuerdos de custodia del territorio*.⁷ These were examined through a common analytical framework covering such questions as legal basis, purpose, land scope, parties, content, creation, registration, transfer, long-term enforcement, incentives, interaction with other legal regimes, and implementation in practice.⁸

Secondly, we examined the Portuguese landscape in order to assess whether, and in what form, a dedicated conservation mechanism could fit within existing constitutional, environmental, and private law frameworks. This included looking at the legal tools already available for land conservation and restoration and identifying where they may fall short of the specific aim of securing durable commitments over time.

Thirdly, we translated those insights into reform options and recommendations for Portugal. Rather than presenting a final legislative draft, we developed a structured roadmap identifying the main legal and policy choices Portugal will need to address if it wishes to introduce such a mechanism.⁹

3. What the Portuguese landscape shows

The research suggests that Portugal does not currently have a single tool capable of securing long-term, voluntary conservation and restoration commitments over land in the way this project envisages.

3.1. Limits of existing tools¹⁰

Contracts can support conservation but generally bind only the original parties and by themselves they do not provide enough certainty if the land changes hands. Ownership transfer can provide permanence, but it is costly and depends on an owner's willingness to sell. Easements are tied to a dominant property and are poorly suited to a mechanism that may need to function independently of adjacent land and include active stewardship obligations. Superficies rights have mandatory scope which can interfere with restoration plans for the land. Private protected areas are an important existing tool, but they operate within a public law framework and do not provide the same kind of voluntary, party-shaped, land linked mechanism that this project is exploring.

3.2. Why a dedicated mechanism may be needed

The conclusion emerging from the research is that Portugal may need a dedicated legal mechanism specifically designed for long-term conservation and restoration commitments over land. The wider Portuguese legal framework already supports strong private participation in environmental protection and restoration. Such a mechanism could also help Portugal meet wider international and EU environmental obligations, particularly where long-term conservation, ecological restoration, and stewardship on privately owned land – as well as public land not designated as protected – are relevant. This may become especially relevant in the national implementation of the Nature Restoration Regulation. In that sense, the central question is not whether Portuguese law can accommodate such a mechanism, but how it should be designed so that it is both effective and workable in practice.

4. What the comparative analysis show

The comparative work confirms that there is no single European model for a long-term private land conservation mechanism. Although the project began from the comparative idea of “conservation easements”, the European mechanisms examined do not simply reproduce the original concept. Instead, different jurisdictions have taken different legal routes to address similar practical problems: how to secure long-term commitments over land, how to make them continue when ownership changes, how to define the role of the parties, and how to connect private land stewardship with wider public conservation goals.

4.1. Comparative overview: what each jurisdiction contributed

Table 1. Main takeaways from the comparative analysis

Jurisdiction	Instrument	Main contribution	Practical lesson
England	Conservation covenants	Shows the value of a modern, purpose-built statutory instrument for conservation that does not	Strong legal model driven by need to show biodiversity net gain on

		depend on a dominant property and can support both restrictive and positive obligations.	development sites, but still relatively new. ¹¹
Scotland	Conservation burdens	Shows that a durable land-linked conservation burden can exist without classic easement logic.	Currently underused tool due to lack of market need for them illustrating that a legal tool may remain underused without strong incentives and support. ¹²
France	ORE's	Particularly important as a continental European example of a dedicated conservation-specific mechanism outside the classic core of property law.	Also useful on up-front cost relief and monitoring of uptake. ¹³
the Netherlands	KV	Useful as a point of contrast, showing the limits of a non-conservation-specific land-linked obligation.	Helps explain why Portugal mechanism should likely be conservation specific. ¹⁴
Catalonia	<i>Acuerdos de custodia del territorio</i>	Relevant for flexibility across land types and for the role of intermediary stewardship entities.	Important for templates, technical support, public funding, and trusted intermediaries. ¹⁵

4.2. Main comparative lessons

Taken together, the comparative testing suggests four broad lessons.

First, a dedicated conservation mechanism does not need to build on a classic easement model and should not depend on the existence of a neighbouring benefited property.

Secondly, if a conservation mechanism is meant to support restoration as well as protection, it will often need to allow both restrictions on harmful activities and active management commitments.

Thirdly, if a conservation mechanism is intended to remain effective over time, it will usually need a clear formal basis and registration.

Fourthly, implementation matters greatly: legal availability alone is rarely enough to ensure meaningful uptake.

5. Main design questions for Portugal

The reform options chapter in the full report develops the main legal and policy questions which Portugal will need to answer if it wishes to introduce a dedicated long-term conservation mechanism. The analysis now points to a clearer preferred direction on each of these questions.¹⁶

5.1. Legal basis and overall structure

The analysis points towards a standalone special law, rather than trying to fit the mechanism into one of the existing statutes, and in particular into one of the legal categories provided for in the Civil Code. This appears to be the safest route because it would allow the mechanism to be created

expressly and coordinated clearly with relevant legislation (land registration, environmental law, planning, forestry, hunting).¹⁷

The mechanism would also be a new instrument combining contractual and land-related features. In practical terms, this means that the law would need to state clearly what the mechanism is, what effect it has, and how it remains effective over time.

5.2. Purpose

The direction of the research is that the mechanism should remain specific to conservation, but that the purpose should be framed broadly enough to include restoration, conservation, and management of the environment of the land, including biodiversity, habitats, ecological functions, and natural features.

Related aims, such as climate mitigation, sustainable management of natural resources, and certain landscape or heritage elements, may also be included where they support those core purposes.

5.3. Eligible land and scope

The mechanism should not depend on a dominant property and should be capable of attaching to registered immovable property, including clearly identified parts of a property where registration techniques allow.

It should also be capable of use on land that is already subject to public law environmental or land-use regulations, provided it complements rather than displaces those rules.

The current recommendations do not favour limiting the instrument only to land of a certain size with a pre-existing conservation status.

5.4. Parties who may create or hold it

On the burdened side, the mechanism should be capable of being created by the owner or, where appropriate, by certain other holders of rights over land acting within the limits of those rights.

On the holder side, the current direction is to limit eligibility to legal persons with a sufficient connection to conservation, restoration, or stewardship. Natural persons are not favoured as holders, given the long-term nature of the mechanism and the level of legal, technical, and organisational capacity it is likely to require. At this stage, the recommendations do not favour making formal accreditation or designation a constitutive requirement. However, questions of oversight, complaints, and possible review of holder status could be considered further as part of later implementation work.

5.5. What commitments it should allow

One of the clearest findings is that the mechanism needs to allow both negative and positive obligations. This is central to its usefulness. Long-term conservation and restoration often require more than simply stopping harmful uses; they may also require active habitat management, restoration work, monitoring, maintenance, or related stewardships commitments.

The analysis also supports allowing reciprocal arrangements where appropriate, for example where the holder also takes on support, monitoring, or funding responsibilities.¹⁸

5.6. How it should be created and registered

The recommendations support a model in which the mechanism would need to be created formally and registered if it is to remain effective over time and continue to bind the land when ownership changes.

The preferred route is that the mechanism should be created through a formal legal instrument, not just a private agreement between the parties, and then registered. The law would also need to deal clearly with the position of pre-existing rights and with the relationship between the mechanism and existing sectoral regimes (e.g. hunting laws).

5.7. How it would remain effective over time

The holder's position should in principle be transferable to another eligible entity, subject to formal requirements, so that the instrument does not fail simply because the original holder can no longer continue in its role.

The law would also need to state clearly that future owners of the land are bound by the mechanism once the relevant conditions for its legal effect have been met, and clarify how it interacts with pre-existing rights and with rights created later.

The current recommendation favours an instrument of indefinite duration by default, with continuity and adaptation preferred over easy extinction.

5.8. Monitoring, enforcement, and compliance

The recommendations suggest that the law should provide a basic enforcement framework and require the obligations in the instrument to be set out clearly enough to support registration, monitoring, and enforcement.

Detailed monitoring arrangements – such as access, inspection, reporting, and notice provisions – should normally be set out by parties' agreements within the individual instrument itself.

Remedies should be designed, as far as possible, to preserve the purpose rather than automatically bring the instrument to an end in the case of default.

5.9. Support, incentive, and implementation

The analysis distinguishes between broader support measures that can be developed over time and a smaller set of costs-related measures that are closely tied to the creation and operation of the instrument and may appropriately be addressed in the law itself.

One relevant finding is the distinction between the core legal mechanism and the support framework that may help it work in practice.¹⁹ The legal validity of the mechanism should not depend on the existence of incentives or support schemes. At the same time, comparative experience suggests that uptake will depend in practice on whether the mechanism is supported by practical tools, technical advice, trusted intermediary actors, and some form of financial or fiscal support.

This wider implementation support should therefore be treated as a follow-up workstream, rather than something that must be fully resolved before the mechanism itself can be introduced. However, the analysis also suggests that the statute itself could include targeted measures to reduce the up-front costs of creating and registering the mechanism, such as reductions or exemptions from registration fees or similar transaction costs. This would mirror one of the useful lessons drawn from the French model and would make the mechanism more accessible from the outset.

Beyond those initial measures, follow-up work could address model documentation, guidance, advisory support, intermediary roles, and the possible development of wider financial and fiscal support, including CAP/PEPAC, other environmental and restoration funding schemes, Portuguese carbon and natural-capital frameworks, and existing national funds.

Any future support regime should reward additional conservation or restoration value only and avoid paying twice for the same outcome under overlapping schemes.

5.10. Relationship with existing legal regimes

The mechanism should complement, and not override, existing public law conservation and land use regimes. It would need to fit with planning, forestry, hunting, agriculture, conservation, protected areas, and other relevant frameworks.

Its role would be to add a durable private or hybrid layer of commitment, not to displace mandatory public law controls.

6. Recommendations

Taken together, the research points towards a dedicated Portuguese conservation mechanism through a new law, designed specifically to support long-term stewardship commitments over land.

The main recommendations can be summarised as follows:

- Portugal should create a dedicated, conservation-specific, registrable instrument by special statute.
- The instrument should not depend on a dominant property.
- It should be capable of attaching to registered land, including clearly identified parts of a property.
- It should allow both negative and positive stewardship obligations.
- It should be formally created and registered so that it can remain effective over time and continue to bind the land when ownership changes.
- It should be designed to complement, rather than replace, existing public law frameworks.
- The statute may appropriately include targeted measures to reduce the up-front costs of creating and registering the instrument, such as reductions or exemptions from registration fees or similar transaction costs.
- Wider support measures, including guidance, model documentation, advisory support, and broader financial or fiscal support, should be developed progressively as part of implementation rather than treated as a precondition to creating the mechanism itself.

7. Why this matters for policy, advocacy, and next steps

This project is intended not only to analyse legal possibilities, but also to support the next phase of work needed to move towards reform.

The extended executive summary and the full report can therefore serve several purposes. They can support policy and advocacy discussions by showing that Portugal does not need to invent this conversation from nothing; they can help structure conversations with public authorities and policy makers by identifying the main legal and institutional choices that would need to be made; and they

can help support the convening of Portuguese lawyers and other experts who may later be involved in developing a legislative proposal.

The full report is available on request by contacting Stephanie Smith (Managing Lawyer – Rewilding Law) at stephanie.smith@lifescapeproject.org, and Catarina Prata (Senior Rewilding Lawyer) at catarina.prata@lifescapeproject.org.

¹ European Environment Agency, *State of Europe's Environment 2025*, available at: <https://www.eea.europa.eu/en/europe-environment-2025>. For Portugal, see the country profile at: <https://www.eea.europa.eu/en/europe-environment-2025/countries/portugal>.

² See Regulation (EU) 2024/1991 on nature restoration, which establishes the principle of continuous improvement and non-derogation as a corollary of this need to ensure long-term restoration measures and goals (recitals 33), 34, 36, 37, 38, 39, and 46; article 4(11) and (13) and article 5(9). Full text available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1991&qid=1722240349976>.

³ In its original US sense, a conservation easement is a non-possessory right in land used for conservation purposes: ownership remains with the landowner, but certain uses are restricted and the arrangement is intended to bind future owners. This concept became the most widespread private land conservation tool in the United States, but it has not been copied in full in Europe. In many civil law systems, the legal protection of ownership and the role of public law restrictions differ significantly from the US context, so voluntary agreements are better understood as a complement to protected areas and public regulation rather than as a substitute for them. In addition, servitudes and land-linked arrangements, whilst the nearest European equivalent, do not always reproduce all the defining features of the US model, particularly given the absence of the same fiscal framework that has supported conservation easements in the US. This is especially relevant in Portugal, where easements depend on the existence of a dominant and a servient property and therefore do not provide a straightforward basis for a conservation mechanism intended to operate independently of adjacent land.

⁴ Article 1543 and following of the Portuguese Civil Code.

⁵ For the Portuguese constitutional and environmental framework, see Constituição da República Portuguesa, art. 66; Lei n.º 19/2014, de 14 de abril (Lei de Bases do Ambiente); Lei n.º 98/2021, de 31 de dezembro (Lei de Bases do Clima); Decreto-Lei n.º 142/2008, de 24 de julho (regime jurídico da conservação da natureza e da biodiversidade).

⁶ The three-step methodology is described in the project's methodology and analytical framework chapter

⁷ For the main foreign legal bases: Environment Act 2021, Part 7 (England and Wales); Title Conditions (Scotland) Act 2003, s. 38 and related provisions; Code de l'environnement, art. L132-3; Burgerlijk Wetboek, Boek 6, art. 6:252; Ley 42/2007, art. 72; and the Catalan Civil Code provision on the *contracte de custòdia del territori*.

⁸ The full comparative analysis is described in great detail in the final report. The report also has an Annex with a Country Comparison Table.

⁹ The reform-options and recommendations chapters use the same analytical framework applied to the comparative analysis.

¹⁰ The limits of ordinary contracts, ownership transfer, easements, and superficies are discussed in the Portuguese legal landscape analysis and in the reform-options chapter.

¹¹ Environment Act 2021, Part 7, especially the provisions on conservation covenants and responsible bodies.

¹² Title Conditions (Scotland) Act 2003, s. 38 and related conservation-burden provisions.

¹³ Code de l'environnement, art. L132-3 and related provisions on *obligations réelles environnementales*; see also the provisions on reciprocity, revision/termination, and relief from certain registration/publicity charges.

¹⁴ Burgerlijk Wetboek, Boek 6, art. 6:252, on *kwalitatieve verbintenissen*.

¹⁵ Ley 42/2007, art. 72, on promotion of *custodia del territorio*; Llei 3/2017 and the Catalan Civil Code provision on the *contracte de custòdia del territori*; and Catalan official materials referring to art. 623-34.

¹⁶ The reform options chapter structures the Portuguese discussion around the same recurring design questions tested in the comparative work.

¹⁷ For the dedicated statutory route in the foreign models, see Environment Act 2021, Part 7, and Code de l'environnement, art. L132-3.

¹⁸ For positive and reciprocal obligations, compare Environment Act 2021, Part 7; Code de l'environnement, art. L132-3 and related provisions; and Catalan stewardship materials.

¹⁹ On the distinction between the legal mechanism and wider support measures, and on the relevance of practical uptake conditions, see the later recommendations and the Catalan / French implementation context.