Nature Restoration Regulation

Eurelectric position paper

August 2022

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:
- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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Position paper on the Nature Restoration Regulation

A Eurelectric position paper August 2022

KEY MESSAGES

Eurelectric welcomes the Commission's proposal for a Nature Restoration Regulation (NRR)
The European electricity sector has undertaken intensive efforts to develop synergies between nature restoration and the deployment of renewable energy sources while strengthening energy independence. In this context, we encourage further initiatives addressing the interlinked challenges of climate change and biodiversity loss.

Synergies between nature restoration and renewable electricity generation must be activated
Best practice examples included in our Power Plant Project demonstrate how synergies between nature restoration measures and renewable electricity generation can be achieved. For this purpose, Eurelectric urges that the development of National Restoration Plans (NRPs) shall be consistent with the designated "renewables go-to areas" introduced by the REPowerEU Communication.

Clear definitions in accordance with existing legislation are essential
Definitions and rules in accordance with existing legislation would streamline the implementation of the regulation. Eurelectric supports the focus on restoration efforts regarding the most at-risk ecosystems in the NRR while continuing to support the exceptions in the Water Framework Directive (WFD) for artificial or heavily modified water bodies in Article paragraphs 4.3 and 4.5. Subsequently, for an effective regulatory structure and implementation, the definitions of "ecosystems in good status" and "baseline" must be clearly specified.

Less than 3% of the barriers in European rivers are used for hydropower
Hydropower plant operators have made great strides to comply with the existing European environmental regulation, including the WFD and the Habitats Directive.

Practical implementation requires sufficient staff at national authorities
Eurelectric strongly encourages the participation of stakeholders in the drafting process of NRPs to ensure a successful implementation of the NRR while providing guidance for investment decisions in renewable energy sources, including in "renewables go-to areas". Additionally, specific EU-wide governance rules and indicators addressing monitoring, assessment, planning, reporting, and enforcement may help competent authorities to consider biodiversity, climate, and habitability issues jointly while concentrating restoration measures on habitats in which actions would be most efficient.

A proposal welcomed and supported by the electricity sector

Eurelectric welcomes the Commission's legislative package aimed at improving the state of natural ecosystems and slashing pesticide use in the EU. The proposal for an NRR is received as a crucial step toward reducing and preventing the impacts of climate change, avoiding biodiversity loss, and enhancing nature conservation. The regulation aims at restoring at least 20% of EU's land and sea areas by 2030, eventually extending to all ecosystems in need of restoration by 2050. In addition, specific targets, including restoring at least 25.000 kilometres of free-flowing rivers, are incorporated.

Against the backdrop of the Russian invasion of Ukraine and at a time when signs of climate change are becoming increasingly noticeable, Eurelectric strongly supports the Commission's efforts to restore degraded ecosystems while accelerating the deployment of renewables and strengthening energy independence. The climate crisis and biodiversity loss are inextricably linked and must be addressed at the same time. For this reason, we have illustrated in our Power Plant Project how the electricity industry is regenerating biodiversity through integrated renewable energy projects. Building on identified barriers and best practices, we have elaborated cross-cutting recommendations that mitigate the impacts of climate change while ensuring biodiversity and energy security.

We and our members stand ready to extend our support to seek innovative and collaborative solutions that simultaneously work for industry, nature, and communities.

We underline the need to find "win-win" solutions that accelerate investments in renewable energy to decrease EU energy dependency and increase security of supply, as well as to help tackle climate changes challenges whilst delivering greater than ever biodiversity protection and societal benefits.

Synergies between nature restoration and renewable electricity generation must be activated

As the proposal covers protected areas as well as "semi-natural ecosystems," such as economic activity sites, prospective areas for renewable energy development will be affected by the regulation. We support the concept of "renewables go-to areas", which obligates Member States to swiftly map, assess, and ensure suitable space for renewable energy projects, while excluding environmentally valuable protected areas. Building on this concept, Eurelectric proposes that "renewables go-to areas" are to be defined before the NRR assessments are transposed and finished and that consideration is given to existing environmental and climate legislation, including Habitats and Bird Directives and the WFD. However, we stress that when applying the NRR, projects outside of "renewables go-to areas" must not be disadvantaged. We also urge the Commission to harmonise the issuance of the revised Renewable Energy Directive, identifying criteria for "renewables go-to areas" and the NRR. At this point, we would like to refer again to our Power Plant Project and the best practice examples it contains on how synergies of climate protection and the restoration of biodiversity can be achieved.

Besides unavoidable changes to the habitats listed due to force majeure, an exception is granted for projects of overriding public interest for which there are no less harmful alternative solutions available. Within protected areas, the Habitats Directive must be considered; outside these areas, a case-by-case assessment must be conducted. Nevertheless, Member States must have the flexibility to consider on a case-by-case basis whether a renewable energy project is of overriding public interest based on the environmental impact assessment of a certain RES project - regardless of whether it is located within a protected area.

Though the proposal explicitly requires that synergies with priority areas must be considered, it remains unclear how this can be implemented. In principle, protected areas are excluded from the "go-to areas" designation. However, outside protected areas, environmental impact assessments will be carried out at the area level and not at the project level, and it difficult to understand how a case-by-case approach mentioned in Article 4 for these "go-to areas" will be implemented. The proposal therefore needs more clarity in this context. Furthermore, the Commission should develop specific guidelines for the application of the overriding public interest to ensure a swift and correct implementation at the national level.

Clear definitions in accordance with existing legislation are essential for successful implementation

The proposal aims to set restoration targets for terrestrial and marine habitats and species based on data from reporting under the Nature Directives and other sources. There is already a framework and guidance for determining "good status" for habitat types covered by the Habitats Directive. However, for habitat types or ecosystems that are not included in this Directive, good status is not yet defined. Where actions towards ecosystem restoration are made, these should be concentrated on those in poor condition, and which have proven resilience to the effects of climate change. Additionally, these definitions should also consider the WFD's exceptions for artificial or heavily modified water bodies (reference to Article paragraphs 4.3 and 4.5). Regarding freshwater ecosystems, Eurelectric supports concentrating on situations where the economic benefits of restoration outweigh the drawbacks in revenue and RES generation. Furthermore, definitions for "good condition of ecosystem services" (regarding habitat conditions) and "baseline" (regarding assessments of these conditions) are necessary for an effective regulatory structure.

Regarding freshwater ecosystems, requirements for restoration could affect hydropower plants located in designated restoration areas. It is therefore of utmost importance that these plants are not restricted in operation if they comply with existing EU legislation. In this context, specific reference is made to the WFD, as coherence of the provisions in the NRR are essential. The hydropower sector has been striving for decades to meet the requirements defined in the WFD, using enormous financial resources. In many cases, this commitment and the financial participation of hydropower plant operators made ecological continuity possible in the first place. Private investments by the operators can also save the public sector extensive costs for creating continuity. Eurelectric would like to emphasise the close link between nature restoration and water policy. Consideration and

harmonisation of interpretations and provisions along with existing directives and guidance documents is of highest relevance.

Less than 3% of the barriers in European rivers are used for hydropower which are by no means obsolete

The Proposal aims to restore at least 25.000 km of free-flowing rivers by 2030 through the removal of obsolete barriers. Eurelectric welcomes the wording that removal of obsolete barriers is primarily not aimed at those barriers that are used for generating renewable energy. In this context, it needs to be emphasised that hydropower is responsible for less than 3% of the barriers in European rivers (21.500 hydropower plants out of over 1 million barriers) and that the EU's alluvial and riparian areas have one of the highest shares of habitats in good condition - 55%, as mentioned in part 11 of the accompanying Impact Assessment. Moreover, hydropower plant operators have made significant efforts to implement comprehensive measures to increase river continuity and biodiversity. To minimise the impact of the operation of hydroelectric power plants on water bodies and fish fauna, the industry has constantly developed and improved technologies in recent years. For example, modern hydroelectric power plants can, in conjunction with the appropriate technical protective equipment, protect fish from entering and thus being damaged in turbines. Reliable fish protection and adherence to the legal mandate to protect fish populations can therefore be guaranteed.

Furthermore, it should be considered that weirs may provide several benefits when it comes to climate adaptation: flood risk mitigation, groundwater stabilisation, and water retention, as well as creation and conservation of wetlands and retreat habitats during drought and flood periods, especially in small rivers. In many flood areas, this is already or will be combined with drinking water production. The fact that hydropower can support multiple measures at the same time in the areas of climate protection and climate adaption needs to be considered when it comes to the definition of "obsolete" or not.

In addition, hydropower plants were in many cases only built as a secondary use of water at existing barriers. This means that the primary reason for the construction of the dam and thus the primary use of the barriers is, for example, flood protection or regulating water bodies. In these cases, hydropower was added later or as a secondary use, but was not the primary reason for the construction of the barrier.

Additionally, we advocate that the focus of the Member States when it comes to removing barriers should be changed from "primarily obsolete barriers" to "exclusively obsolete barriers" to encompass installations which are no longer needed for energy generation, inland navigation, agriculture, water supply, flood protection, or other economically significant applications. Assessments of whether a barrier is obsolete or not should be done on a case-by-case basis, considering the specific purpose of the installation and all local, regional, and national particularities. Additionally, the possibility for obsolete barriers to be rendered non-obsolete through the construction of a hydropower plant should also be considered, provided the plant allows for fish migration and therefore does not hamper the continuity of the river. Furthermore, the prioritisation for removal of barriers and other restoration measures should be assessed according to the guidance on river restoration

targets in the EU 2030 Biodiversity Strategy. Lastly, for cases in which the ownership of obsolete barriers is unknown or complex, Member States should provide adequate financing for their removal. Furthermore, in the prioritization for removal of barriers and other restoration measures the Member States take note of the river restoration targets included the 2030 Biodiversity Strategy.

Hydropower supports the energy transition and helps to reduce energy dependency by providing renewable energy and storage, as well as flexibility and ancillary services to the grid. Thereby, it mitigates climate change, which poses a significant threat to biodiversity. This fact is reflected by the Commission's REPowerEU plan, which requires Member States to enshrine in law that the construction and operation of plants to produce energy from renewable sources is in the overriding public interest until climate neutrality is achieved.

Eurelectric would like to highlight that the definition of "free flowing rivers" as the basis for the achievement of the target remains highly vague, leading to regulatory uncertainty. When defining the concept, it should be considered that continuity of rivers might in many cases also be impaired by natural barriers, such as those built by beavers. The biosphere is always a dynamic and complex system which can change independent of human interference. In certain cases, activities intended to create positive effects can end up deteriorating an ecosystem, for example when digging out a floodplain or wetland to remove a barrier.

Practical implementation requires sufficient staff at national authorities

The regulation will require Member States to develop National Restoration Plans in close cooperation with the public. We also strongly encourage the participation of various stakeholders in this process. Specific governance rules (monitoring, assessment, planning, reporting, and enforcement) would also ensure that authorities jointly consider biodiversity, climate, and livelihood issues and concentrate restoration measures on habitats in which measures would be most efficient and effective. Additionally, indicators attached to these plans should be designed at an EU-level to avoid disparities. To successfully implement "renewables go-to areas" and NRPs, as well as the evaluation of renewable projects outside these areas, sufficient staff at national authorities is crucial.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

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