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## EU NATURE RESTORATION REGULATION (COM(2022)304 FINAL) – FORTUM POSITION

### Fortum key messages

- Fortum supports the EU Biodiversity Strategy and its high ambitions to protect and restore species and habitats.
- Biodiversity regulation should be aligned with climate change mitigation, renewable energy and security of supply goals.
- High ambitions regarding biodiversity, that Fortum supports, should if needed, be supported by legislation which effects are carefully evaluated and overlapping regulation avoided.
- The proposal for a Nature Restoration Regulation could have unforeseen negative consequences for the energy system, in particular for hydro and wind power, and power grids.
- Fortum e.g., has many hydro power plants located in areas of habitat types listed in the Annex.
- The existing hydro power production, the future renewable energy production and the security of energy supply must be safeguarded in order to reach EU climate and energy goals.
- The proposal includes unclear concepts and definitions that need to be clarified.
- The cost-effectiveness and efficiency of the restoration measures must be ensured.
- The flexibility of the regulation should be maintained, allowing Member States to define their own restoration measures.

This position paper also includes **Fortum's proposals for amendments** with the aim to safeguard the existing and future renewable energy production and the security of energy supply, and **Fortum's more detailed comments**.

### For additional information:

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**Fortum's amendment proposals with the aim to safeguard the existing and future renewable energy production and the security of energy supply:**

- **Art 4(new point): When putting in place the restoration measures referred to in paragraphs 1, 2 and 3, Member States shall address areas, which are those that are not needed for renewable energy generation.**
  - Support for the corresponding ENVI amendment: 759
- Art. 4(6): Member States shall ***promote ensure*** that the areas that are subject to restoration measures in accordance with paragraphs 1, 2 and 3 show ***an continuous*** improvement in the condition of the habitat types listed in Annex I ***until good condition is reached***, and ***an continuous*** improvement of the quality of the habitats of the species referred to in paragraph 3, until the sufficient quality of those habitats is reached. Member States shall ***promote ensure*** that areas in which good condition has been reached, and in which the sufficient quality of the habitats of the species has been reached, do not deteriorate.
  - Support for the corresponding ENVI amendments: 786, 793
- Art. 4(7): Member States shall ***promote ensure*** that areas where the habitat types listed in Annex I occur do not ***significantly*** deteriorate ***in relation to the objectives of the Directive 92/43/EEC***.
  - Support for the corresponding ENVI amendments: 804, 801, 813
- Art. 4(8): Outside Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 and 7 is justified if it is caused by:
  - (a) force majeure;
  - (b) unavoidable habitat transformations which are directly caused by climate change;
  - (c) a project of overriding public interest for which no less damaging alternative solutions are available, to be determined on a case by case basis.;***or***
  - (d) plants to produce energy from renewable sources, their connection to the grid, the grid itself or storage assets that contribute to climate neutrality by 2050.***
    - Support for the corresponding ENVI amendments: 869, 848, 875

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- Art. 4(9): For Natura 2000 sites, the non-fulfilment of the obligations set out in paragraphs 6 and 7, is justified if it is caused by:
  - (a) force majeure;
  - (b) unavoidable habitat transformations which are directly caused by climate change;
  - (c) a plan or project authorised in accordance with Article 6(4) of the Directive 92/43/EEC; *or*
  - (d) **renewable energy production that is of importance for fulfilling the national energy and climate plans (NECPs) and securing the energy system of a Member State.**
    - Support for the corresponding ENVI amendments: 910, 920
  
- Art. 7(2): Member States shall remove the barriers to longitudinal and lateral connectivity of surface waters identified under paragraph 1 of this Article, in accordance with the plan for their removal referred to in Article 12(2), point (f). When removing barriers, Member States shall **primarily** address obsolete barriers, which are those ***without actual or potential use that are no longer needed*** for renewable energy generation, inland navigation, water supply, ***flood protection*** or other uses.
  - Support for the corresponding ENVI amendments: 1256, 1249, 1258, 1259
  
- Art. 11(6): “Member States shall coordinate the development of national restoration plans with ***the existing and future renewable energy production and*** the designation of the renewables go-to areas. During the preparation of the nature restoration plans, Member States shall ***safeguard the existing renewable energy production that helps to secure the energy supply, and*** ensure synergies with the already designated renewables go-to areas and ensure that the functioning of the renewables go-to areas, including the permitting procedures applicable in the renewables go-to areas foreseen by Directive (EU) 2018/2001 remain unchanged.”
  - Support for the corresponding ENVI amendments: 1688, 1692

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## Fortum's messages more in detail

Fortum recognizes the degradation of biodiversity as one of the biggest environmental challenges globally. Biodiversity loss and the degradation of ecosystems are a severe global concern that must be tackled. Fortum has identified biodiversity as one of our sustainability priorities. We need to know our impacts and dependencies on biodiversity and ecosystem services to be able to assess the related risks and opportunities and take mitigation measures accordingly.

Fortum supports the EU Biodiversity Strategy and its high ambitions to protect and restore species and habitats, including the target to protect a minimum of 30% of the EU's land area and 30% of the EU's sea area by 2030 and the general target for restoration of ecosystems.

Fortum sees that the proposal for a Nature Restoration Regulation could have unforeseen negative consequences for the energy system, in particular for hydro and wind power, and power grids. High ambitions regarding biodiversity, that Fortum welcomes, should if needed, be supported by legislation which effects are carefully evaluated and overlapping regulation avoided. Alongside regulation voluntary actions by companies play an important role.

Biodiversity regulation should be aligned with climate change mitigation, renewable energy and security of supply goals. The national restoration plans should take into account the current legislation and the emission reduction targets and renewables targets that the EU has set. The proposal includes unclear concepts like 'good condition', 'favourable reference area', 'enhanced connectivity' and 'free-flowing rivers', which makes assessing the impacts of the proposal on renewable energy production very challenging. Taking into account the documented losses over at least the last 70 years would also treat different member states very unequally.

Hydropower provides more than 10% of the EU's total electricity demand and is the backbone for balancing the Nordic energy system. The EU regulatory framework, including the Water Framework Directive (WFD) and the Habitats directive, already regulates hydropower heavily. New regulations such as the sustainable finance taxonomy, RED (Renewable Energy Directive) III and the definition of go-to areas in the REPowerEU will challenge the current hydropower production further.

Wind power is an increasingly important source of renewable energy, with a bit higher share of the EU's total electricity demand than hydro power. Wind power has a huge investment potential, which must also be considered in the restoration plans.

Combatting climate change is one of the most effective ways to stop the degradation of nature. If the local biodiversity enhancing measures would lead to a decrease in renewable energy production, the local measures could result in a negative impact on global biodiversity. A key solution for tackling climate change is sector integration and electrification of society. Unlike today, a majority of the energy use in the future will need to be provided in the form of electricity. Hence the biodiversity regulation should aim at not causing excessive production losses of fossil-free electricity.

Fortum recognizes that energy production methods such as hydropower must also contribute to mitigation of adverse impacts to biodiversity. Major investments are

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ongoing in Member States to mitigate environmental impact from hydropower in accordance with the WFD and the Habitats directive. Balancing the contribution of hydropower in combatting climate change and in balancing the power system with mitigating its impacts on biodiversity can be best done via implementation of existing regulation such as the WFD and the Habitats directive. The interlinkages of restoration targets with water legislation (e.g. the WFD) should be carefully assessed. It must also be taken into account that the targets set by e.g. the WFD have already led to losses of renewable power production and power system flexibility.

Fortum supports the objective to restore at least 25000 km of rivers into free flowing. The target should however be reached by addressing exclusively obsolete barriers, which are those that are no longer needed for renewable energy generation, inland navigation, water supply or other uses. Fortum therefore sees that the wording of article 7 should be clarified. It should be noted that less than 3% of the barriers in European rivers are used for hydropower.

The restoration measures needed to meet the targets in article 4 are much more ambitious than the EU Biodiversity Strategy and the objective of article 7 and could jeopardize the current hydro power production. The measures need to be reassessed in order to secure the hydro power production needed to reach the EU renewables targets. The impact on existing renewables production needs to be considered and no significant adverse impacts can be justified. The legal certainty of renewable energy producers must be ensured.

It must also be taken into account that in some member states existing hydropower is located in Natura areas. The consequences of the proposal on renewable energy production would be even more serious in these areas. E.g. in Sweden, Fortum has 10 hydro power plants that are directly located in Natura 2000 areas, and around 30 plants which have a possible impact on Natura areas. The varying implementation of the WFD in different member states must also be taken into account. E.g., the classification of water bodies as heavily modified varies a lot in different member states.

The proposal also includes a non-deterioration provision (with some exceptions) in article 4, that also applies to areas outside protected areas. Fortum sees that this provision would overlap with the current nature protection regulation and finds it unclear how this new provision would be applied alongside the current regulation. It is also worth noting that the implementation of the WFD with a similar prohibition on weakening the water body has made the operating environment very unpredictable.

The cost-effectiveness and efficiency of the restoration measures must be ensured. The alternative costs of the restoration measures must also be taken into account. Priority should be given to implementing measures where it delivers the largest benefits. Clear definitions in accordance with existing legislation are essential.

The flexibility of the regulation should be maintained, allowing Member States to define their own restoration areas and other measures to achieve the targets set in the act. Practical implementation requires broad expertise at national authorities.

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The overall EU regulatory framework needs to be logical and consistent over time. The basis for environmental requirements on renewables such as hydropower should as far as possible be derived from one single source, e.g., the Water Framework Directive for hydropower. Any changes in the levels of ambitions with stricter environmental requirements should be reflected at that source. This would facilitate development over time without risking overlapping regulation and legal uncertainty.