



# The EU's Nature Restoration Law and administrative designs of the Member States: does the procedural organise the institutional?

*Reflections on the emerging inter-sectoral, multilevel but (still) nation-centred governance framework in the context of transboundary climate change adaptation challenges*

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12th EELF Conference 2025, Gent/Gand 10-12 September 2025

**This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement n° 948473)**

- In general: the EU constitutional choice of executive federalism -> administrative authorities that generally execute EU law are national authorities -> national law governs the case -> administrative decisions taken by national authorities are valid in the national territory;
- National institutional (administrative) autonomy (NIA): Member States' freedom to designate and structure the administrative bodies responsible for the application and enforcement of EU rules
- Article 291(1) TFEU: Member States (MS) shall adopt all measures of national law necessary to implement legally binding legal acts; Article 4(3) TEU: MS shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties.....
- NIA as a principle? A value? Exact boundaries of NIA? Freedom as long as MS are capable of implementing EU law?



- ERC EUDAIMONIA: analysis of the EU's involvement in Member States' administrative design decisions across 18 sectors of regulation, including environmental protection
- Environment (Article 192(1) TFEU): less harmonised than other sectors, though the EU legislator's case-by-case approach
- Here: analysis of the Regulation (EU) 2024/1991 on nature restoration (Nature Restoration Law, NRL) from the executive federalism and NIA point of view
- Analysis of NRL draft preparatory documents, NRL itself, NRL Commission implementing regulation (EU) 2025/912, documents/press releases from the Member States...
- NRL: an exemplary case of full national institutional autonomy of MS retained?



# Example of organisational requirements: AI Act (Regulation (EU) 2024/1689)



## Article 28

### Notifying authorities

1. Each Member State shall designate or establish at least one notifying authority responsible for setting up and carrying out the necessary procedures for the assessment, designation and notification of conformity assessment bodies and for their monitoring. Those procedures shall be developed in cooperation between the notifying authorities of all Member States.
2. Member States may decide that the assessment and notification of conformity assessment bodies are taken by competent persons or bodies within the Member State.
3. Notifying authorities shall be established, designated or notified, and that the obligations set out in Article 78 shall be fulfilled by them.
4. Notifying authorities shall be organised so that the assessment and notification of conformity assessment bodies are taken by competent persons or bodies within the Member State.
5. Notifying authorities shall offer or provide consultancy services on a commercial or non-commercial basis to conformity assessment bodies.
6. Notifying authorities shall safeguard the confidentiality of information received from conformity assessment bodies in accordance with Article 78.
7. Notifying authorities shall have an adequate level of resources to ensure the adequate performance of their tasks. Competent persons or bodies in fields such as information technologies, AI and cybersecurity shall be consulted, as appropriate.
8. Where Union institutions, bodies, offices or agencies fall within the scope of this Regulation, the European Data Protection Supervisor shall act as the competent authority for their supervision.

## Article 70

### Designation of national competent authorities and single points of contact

1. National competent authorities shall take appropriate measures to ensure an adequate level of cybersecurity.
2. When performing their tasks, the national competent authorities shall act in accordance with the confidentiality obligations set out in Article 78.
3. By 2 August 2025, and once every two years thereafter, Member States shall report to the Commission on the status of the financial and human resources of the national competent authorities, with an assessment of their adequacy. The Commission shall transmit that information to the Board for discussion and possible recommendations.
4. The Commission shall facilitate the exchange of experience between national competent authorities.
5. National competent authorities may provide guidance and advice on the implementation of this Regulation, in particular to SMEs including start-ups, taking into account the guidance and advice of the Board and the Commission, as appropriate. Whenever national competent authorities intend to provide guidance and advice with regard to an AI system in areas covered by other Union law, the national competent authorities under that Union law shall be consulted, as appropriate.
6. Where Union institutions, bodies, offices or agencies fall within the scope of this Regulation, the European Data Protection Supervisor shall act as the competent authority for their supervision.

Notifying authority and single points of contact shall be designated by Member States. Notifying authorities shall refrain from performing tasks that may be performed by the Member State.

Member States shall designate, through the national competent authority, a single point of contact for the Commission and the market surveillance authorities. Member States shall ensure that the single point of contact is contacted, through the national competent authority, to act as the single point of contact.

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OJ L, 12.7.2024

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# NIA 'bingo'



- (+) Lack of explicit organisational requirements directed at Member States
- (+) '*No commandeering rule*' -> *no direct command to national executive officers* [R. Schütze, '*European Union Law*' (2025); AG Cruz Villalon in Case C-279/12 para 70] -> in NRL, lack of any explicit reference even to a general category of 'competent authorities', all obligations directed at the Member States
- Main 'regulatory tool' - National Restoration Plans (NRPs) follow the territoriality principle
- (-) lack of explicit harmonisation via implementing regulation

# NIA 'bingo' part 2:



- NIA as a 'compensatory principle for authorities having to apply EU law' (*Verhoeven 2010, Finck 2017*) -> Significant administrative costs expected at the draft NRL stage already -> SWD(2022) 167 final 1/12

## **Administrative impacts (score: 1)**

Several administrative impacts can be expected, including costs for the surveying of ecosystems, development of national restoration plans, administration and monitoring of ecosystems to be chosen for restoration, as well as for reporting. These costs for 27 Member States together are estimated to amount to nearly EUR 14 billion until 2050. See Annex VII section 4 and Annex III for more details on administrative costs.

## Administrative costs for option 2

	<i>One-off costs</i>	<i>Annual costs</i>
Surveys of ecosystems	1 099 000 000	
Development of national restoration plans;	12 800 000	
Administration of restoration measures (2022-2030; 15 % target)		438 321 000
Monitoring of restored ecosystems		20 643 103
Reporting progress against restoration targets		107 000
<b><i>Sub-total</i></b>	<b><i>1 111 800 000</i></b>	<b><i>459 071 103</i></b>
<b><i>Costs from 2022 to 2050</i></b>	<b><i>1 111 800 000</i></b>	<b><i>12 853 990 884</i></b>
<b><i>Total costs from 2022 to 2050</i></b>		<b><i>13 965 790 884</i></b>

# NIA 'bingo' part 3:



- Is NIA merely a 'political benchmark', which could be extensively limited? -> not necessary in the case of environmental protection, in the case of NRL, far-reaching limitation of NIA is hardly possible for practical reasons;

## **Subsidiarity and proportionality**

### **Subsidiarity**

The legal basis for this legal proposal, Article 192(1) of the Treaty on the Functioning of the European Union, as outlined in section 3.1, states that "Union policy on the environment shall contribute to pursuit of [...] preserving, protecting and improving the quality of the environment". EU competence thus encompasses the entire environment including all ecosystem types. Many environmental issues occur and have impacts at a large geographical scale. See also section 3.2 and 3.3. **At the same time, restoration is an activity that in practice is carried out at a national, regional or local level. It can strongly depend on specific characteristics at the national, regional, or local level, such as biogeographical regions, specific regional, or local, biotic or abiotic features. Restoration thus lends itself naturally to an approach that needs to account for local, regional, and national specificities, whilst maintaining an overall large-scale perspective and direction. This provides the context to consider how to balance effectively what should be best carried out at EU level with what should be best carried out at Member States level.**

# However: implicit organisational obligations?

Through specific obligations, planning (and thus administrative coordination) at the national level becomes compulsory, even if many regional/local/transnational plans (and their preparation by local/regional/transnational authorities) could be more effective:

- *National* Restoration Plans
- ‘Favourable reference area’ in Article 3(8) NRL -> encompasses habitat types in a given biogeographical or marine region at the *national* level
- Recital 35, Articles 4(2) and 15(3)(e) - ‘*national* biogeographical level’
- Articles 4(17)(a) and 5(14)(a)-(b) 0 ‘biogeographical region of the *Member State* concerned’



# However: existing arrangements/scales of planning



Ecosystems to be restored are already in the scope of various administrative authorities/arrangements -> national-level 'umbrella' planning necessary overcome inconsistencies:

- \* Natura 2000 network (Habitats and Birds Directives)
- \* River basin districts: hydrological, not administrative boundaries, most of the river basin districts in the EU are 'international' (transboundary)
- \* Marine (sub)regions under the Marine Strategy Framework Directive

# Rebus sic stantibus: Commission Implementing Regulation (EU) 2025/912: NIA counterbalanced by reporting obligations to COMM



## National restoration plan (NRP)

### 1. Basic information

1.1. Member State Two-digit code according to the code list of countries

1.2. Date of submission of the plan YYYY-MM-DD

1.3. Responsible or coordinating body/bodies Free text, suggested max. 3 000. characters

1.4. Is this a revised version of the NRP? (Art.19)

### Additional Information III – List of urban ecosystem areas when following an approach different from using whole local administrative units

1.5. Summary of the NRP

Member States have the option to determine one or more urban ecosystem areas (UEAs) with an approach different from using whole local administrative units (LAUs), i.e. including parts of a city or town and suburbs, and/or including peri-urban areas. Member States using this approach should provide the data described in these additional information fields.

Similarly, this Additional Information should be filled in also if supplementary data beyond Copernicus were used for the estimate of urban green space and/or tree canopy cover, or if a Member State decides to exclude one or more UEA according to Art.8(1).

Likewise, this Additional Information should be filled in if one or more LAUs are aggregated for the purpose of defining one or more urban ecosystem areas.

For each urban ecosystem area, the following fields should be completed:

# Rebus sic stantibus: Commission Implementing Regulation (EU) 2025/912



- Article 15(3)(c) NRL: NRPs to Each Member State shall include the following elements in the national restoration plan, using the uniform format (...) a description of the restoration measures planned, or put in place, to meet the restoration targets and fulfil the obligations set out in Articles 4 to 13 of this Regulation and a specification regarding which of those restoration measures are planned, or put in place, within the Natura 2000 network established in accordance with Directive 92/43/EEC
- Meanwhile, the Commission Implementing Regulation -> NUTS2 and NUTS2 scale of planning not necessarily reflect administrative divides

<p>14.1.4. Scale of planning</p>	<p>Indicate the relevant level (select one):</p> <ul style="list-style-type: none"> <li>a) national</li> <li>b) sub-national NUTS1 (select one or more NUTS1 regions from code list)</li> <li>c) sub-national NUTS2 (select one or more NUTS2 regions from code list)</li> <li>d) local NUTS3 (select one or more NUTS3 regions from code list)</li> <li>e) transnational (select one or more countries from code list to indicate the other Member State(s) involved)</li> </ul> <p>In addition, for further information (optional): free text field (suggested max. 3 000 characters)</p>	<p>14.5. Spatial information</p> <table border="1"> <tr> <td data-bbox="1595 668 1913 832"> <p>14.5.1. Estimated surface area or length subject to the measure (Art.15(3)(a)) (optional)</p> </td> <td data-bbox="1913 668 2527 832"> <p>Indicate a) and b), or c). a) best estimate or range b) select unit (km or km<sup>2</sup>) c) unknown</p> </td> </tr> <tr> <td data-bbox="1595 832 1913 972"> <p>14.5.2. Indicative map of potential areas subject to the measure (Art. 15(3)(a)) (optional)</p> </td> <td data-bbox="1913 832 2527 972"> <p>Geospatial information, provided as NUTS 3 reference, 10x10 km grids or isolated polygons</p> </td> </tr> </table>	<p>14.5.1. Estimated surface area or length subject to the measure (Art.15(3)(a)) (optional)</p>	<p>Indicate a) and b), or c). a) best estimate or range b) select unit (km or km<sup>2</sup>) c) unknown</p>	<p>14.5.2. Indicative map of potential areas subject to the measure (Art. 15(3)(a)) (optional)</p>	<p>Geospatial information, provided as NUTS 3 reference, 10x10 km grids or isolated polygons</p>
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<p>14.5.2. Indicative map of potential areas subject to the measure (Art. 15(3)(a)) (optional)</p>	<p>Geospatial information, provided as NUTS 3 reference, 10x10 km grids or isolated polygons</p>					
<p>14.5.3. Location relative to Natura 2000 (Art.15(3)(c))</p>	<ul style="list-style-type: none"> <li>a) Select one alternative from the following code list:             <ul style="list-style-type: none"> <li>— Measures are planned within Natura 2000</li> <li>— Measures are planned outside of Natura 2000</li> <li>— Measures are planned both inside and outside of Natura 2000</li> </ul> </li> <li>b) Code list of the Natura 2000 site(s) affected by the measure (optional)</li> </ul>	<p>A4. Barriers basic information</p> <table border="1"> <tr> <td data-bbox="1538 1082 1900 1179"> <p>A4.1. Barrier ID</p> </td> <td data-bbox="1900 1082 2527 1179"> <p>Identifier of the barrier</p> </td> </tr> <tr> <td data-bbox="1538 1179 1900 1416"> <p>A4.2. Water body information</p> </td> <td data-bbox="1900 1179 2527 1416"> <p>If the barrier is linked to any WFD water body, indicate the water body/bodies ID: a) Water body ID (single ID or multiple IDs) If the barrier is not linked to any WFD water body, indicate both of the following: a) river basin district ID b) river name or lake name or coastal area name</p> </td> </tr> </table>	<p>A4.1. Barrier ID</p>	<p>Identifier of the barrier</p>	<p>A4.2. Water body information</p>	<p>If the barrier is linked to any WFD water body, indicate the water body/bodies ID: a) Water body ID (single ID or multiple IDs) If the barrier is not linked to any WFD water body, indicate both of the following: a) river basin district ID b) river name or lake name or coastal area name</p>
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To reference countries' regions for statistical purposes, the EU has developed a classification known as [NUTS](#) (Nomenclature of territorial units for statistics).

NUTS divides each EU country into 3 levels:

- NUTS 1: major socio-economic regions
- NUTS 2: basic regions (for regional policies)
- NUTS 3: small regions (for specific diagnoses)

The  [NUTS 2024 classification](#) is valid from 1 January 2024. It lists 92 regions at NUTS 1, 244 regions at NUTS 2 and 1 165 regions at NUTS 3 level.

NUTS is used for:

- collecting, developing and harmonising European regional statistics
- carrying out socio-economic analyses of the regions
- framing of EU regional policies
  - [regions eligible for support from cohesion policy](#) have been defined at NUTS 2 level
  - the [cohesion report](#) has so far mainly been prepared at NUTS 2 level

<https://ec.europa.eu/eurostat/web/nuts>

# Transboundary cooperation: NRL versus Implementing Regulation



- Article 14(17) NRL:

17. Member States shall, where possible, foster synergies with the national restoration plans of other Member States, in particular for ecosystems that span across borders or where Members States share a marine region or subregion within the meaning of Directive 2008/56/EC.

- Implementing Regulation: lost chance to foster regional transboundary cooperation?

4.2.1 1. Synergies with the national restoration plans of other Member States, where possible (Art. 14(17))

- a) cross-cutting overview (free text, suggested max. 3 000 characters)
- b) article-specific overview – indicate one or more article(s) from the code list of articles (optional)
- c) article-specific overview – free text, suggested max. 3 000 characters (optional)



- Through specific obligations, coordinated planning at the national level becomes compulsory to prepare and submit an NRP, even if many local plans could be more effective -> centralised coordination needed
  - At the same time, regional/local measures -> decentralised management needed
  - Coordination of measures across different regional/local scales of planning
- > Member-State specific, complex and multilevel governance

# Administrative arrangements for preparation of NRPs undertaken by the Member States so far:



	Sole/central responsibility of ministry responsible for environment	Formal coordination, including the ministry responsible for environment	Informal coordination	Transnational coordination arrangements
<b>Austria</b>	-	-	+	-
<b>Czech Republic</b>	-	-	+	-
<b>France</b>	+	-	+	-
<b>Finland</b>	-	+ (?)	-	-
<b>Germany</b>	-	+ (?)	+	-
<b>Ireland</b>	+	-	+	-
<b>Latvia</b>	-	-	+	-
<b>Poland</b>	-	-	+	-
<b>Portugal</b>	-	+	-	-
<b>Romania</b>	-	-	-	-
<b>Spain</b>	-	+/-	-	-
<b>Sweden</b>	-	+(?)	+	+

# (Potential) Negative consequences of NIA in NRL:



- Lack of transition period for adjustment of national legislation, including that necessary for proper operationalisation (creation of administrative framework), even though needed -> in most MS so far, lack of clear delineation/attribution of responsibilities, reliance on informal arrangements and patchy cross-sectoral coordination, potential conflicts and duplication of efforts;
- Lack of explicit legal obligations aimed at the designation of competent authorities = lack of possibility to legally enforce operationalisation before the ECJ -> Member States not motivated to undertake significant investments in administration (staff) and infrastructure necessary for proper long-term application and enforcement of NRL on EU level;
- Differentiated levels of involvement of regional/local actors across MS;
- Differentiated transparency of the NRPs preparation and, possibly, the revision process;
- Very fragmented application and implementation of planned measures across various administrative authorities
- Focus on national & administrative boundaries, unclear rules concerning the restoration of transboundary ecosystems; Transboundary sincere cooperation is *de facto* non-enforceable before the ECJ
- **NIA and subsidiarity used against the original purpose?**