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The EU's Renewable Energy Directive – Planning and Permitting Under the RED III

Abstract. The article examines the recent changes to the EU's Renewable Energy Directive, in short: RED. In order to accelerate the roll-out of renewable energy, the EU legislator has for the first time introduced spatial planning obligations to the RED and significantly changed the provisions on permitting. Possible conflicts between renewable energy plants, on the one hand, and environmental protection, on the other, should ideally be avoided at the planning stage. In areas designated as Renewable Acceleration Areas (RAAs), renewable energy projects shall be exempt from the requirement to carry out an environmental impact assessment (EIA) pursuant to the EIA Directive (2011/92/EU) and an appropriate assessment of the implications for Natura 2000 sites, according to Article 6(3) of the Habitats Directive. As a result, the reformed Directive prioritises the expansion of renewable energy over nature conservation. In order to fulfil the promise of accelerating the deployment of renewables, open legal questions must be clarified and Member States must use the discretion afforded to them by the Directive. Otherwise, Member State authorities will not be able to implement the measures effectively or risk being caught up in litigation against permits for renewable power plants.

Keywords: EU law – climate mitigation – environmental assessment – planning law

Introduction

According to the latest emissions gap report by the UN Environment Programme, the international community's climate protection efforts are failing to meet the goals of the Paris Agreement, even if current commitments are met.[1] Since decarbonising the energy system is an

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[1] United Nations Environment Programme, *Emissions Gap Report 2024: No more hot air … please! With a massive gap between rhetoric and reality, countries draft new climate commitments*, 2024.

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important tool for climate mitigation, the first global stocktake identified the tripling of renewable energy capacity by 2030 as a global effort to be pursued by the UNFCCC parties.[2] However, except for solar PV, the world is not on track to reach this threefold increase.[3]

In this context, the EU's recently amended Renewable Energy Directive[4] (RED) aims to significantly and quickly increase the share of energy from renewable sources in the energy system. It does so in particular by imposing spatial planning obligations on the Member States and by lowering environmental standards. This is intended to speed up the permitting process because the possible negative environmental impacts of renewable energy projects should already be taken into consideration at the earlier planning stage. This article describes and analyses the recent changes by first locating the reform of the RED in its (geo-)political context (section 1), followed by an overview of its central innovations (section 2). Section 3 highlights select legal and practical issues that need addressing so that the RED can be an effective tool to accelerate renewables deployment.

1. Genesis and context of the RED III

The latest reform of the EU Renewable Energy Directive – known as RED III due to it being the third major amendment – is the result of a complex interplay of political, economic and geopolitical developments that have significantly shaped Europe in recent years. In order to fully understand the emergence of the RED III, it is essential to place the reform in the context of key initiatives and challenges: The European Green Deal, the Fit for 55 package, the energy crisis resulting from the Russian war of aggression on Ukraine, and the EU Emergency Regulation.

[2] UNFCCC, *Outcome of the first global stocktake (2024)*, FCCC/PA/CMA/2023/16/Add.1, Decision 1/CMA.5, para. 28, point a.

[3] International Renewable Energy Agency, COP28 Presidency, COP29 Presidency, Ministry of Energy of the Republic of Azerbaijan, Government of Brazil, *Delivering on the UAE Consensus. Tracking progress toward tripling renewable energy capacity and doubling energy efficiency by 2030*, 2024.

[4] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 XII 2018 on the promotion of the use of energy from renewable sources (recast) (OJ L 328, 21 XII 2018, p. 82).

1.1. The European Green Deal and the Fit for 55 package

The European Green Deal was launched by the von der Leyen Commission in 2019 as a set of policy initiatives that seek to tackle environmental challenges.[5] Most of these initiatives were subsequently proposed and adopted as binding legislative acts, with the so-called EU Climate Law[6] being particularly noteworthy, as it is the central legal act to achieve climate neutrality by 2050 and a 55% emissions reduction by 2030.[7] To this end, the European Green Deal provides for extensive measures in various sectors, including transport, agriculture, industry and energy – the latter accounting for three quarters of the EU's greenhouse gas emissions. Switching to energy from renewable sources is therefore identified as essential for the transformation towards climate neutrality.[8]

Many of the initiatives of the European Green Deal assumed a more concrete form through the Fit for 55 package of July 2021. It originally contained 16 proposals to adopt new and amend existing legislative acts as well as non-binding instruments in order to reach the eponymous 55% emissions reduction target by 2030.[9] Most of the measures were based on the EU's legislative competences in the field of environment (Article 192 (1) TFEU) and energy (Article 194 (2) TFEU), one of them being the revision of the RED. The main aim of the Fit for 55 package was to adapt the sector targets and the respective instruments to the overriding objective of GHG neutrality laid down in the new EU Climate

[5] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Green Deal, 11 XII 2019, COM(2019) 640 final.

[6] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 VI 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No. 401/2009 and (EU) 2018/1999 ('European Climate Law'), (OJ L 243, 9 VII 2021, p. 1).

[7] K. Kulovesi, S. Oberthür, H. Van Asselt, A. Savaresi, *The European Climate Law: Strengthening EU Procedural Climate Governance?*, "Journal of Environmental Law" 2024, vol. 36, no. 1, pp. 23–42.

[8] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Green Deal, 11 XII 2019, COM(2019) 640 final, p. 6.

[9] On the Fit for 55 package see S. Schlacke, H. Wentzien, E. Thierjung, M. Köster, *Implementing the EU Climate Law via the "Fit for 55" package*, "Oxford Open Energy" 2022, vol. 1, art. no. oiab002, pp. 1–13.

Law.[10] With regard to the RED, the revision proposed in the Fit for 55 package included an increase in the overall share of energy from renewable sources in the EU's gross final consumption of energy of 40% by 2030, which is 8% more than the previous target that was set in 2018.[11]

1.2. REPowerEU and the Emergency Regulation

Russia's aggression against Ukraine in February 2022 and the ensuing energy price crisis served as a catalyst for the legislative efforts in the energy sector. The EU was left vulnerable to supply disruptions as Russia, one of the main suppliers of natural gas and oil to Europe,[12] attempted to use its energy exports as political leverage. This development highlighted that moving away from fossil fuels is not only necessary from a climate mitigation perspective but also required as a matter of national security to become independent of Russian oil and gas. While the amendments to the RED envisioned in the Fit for 55 package already sought to speed up the roll-out of renewable energies, the war in Ukraine provided a sense of urgency to the temporal component. At the Member State level, domestic measures to avoid social hardship caused by exceedingly high energy prices were adopted,[13] some of which were mandated by EU emergency responses.[14] One of the EU's reactions took the form of the REPowerEU plan.[15] It proposes measures to save energy,

[10] See Article 2 (1) European Climate Law (OJ L 243, 9 VII 2021, p. 1).

[11] See Article 5 (2) of the 2018 version of the RED (OJ L 328, 21 XII 2019, pp. 1–77).

[12] In 2021, 45% of the EU's demand for natural gas was met by imports from Russia, see European Commission, DG Energy, In focus: EU energy security and gas supplies, available at https://energy.ec.europa.eu/news/focus-eu-energy-security-and-gas-supplies-2024-02-15_en (accessed: 25 I 2025).

[13] See, in the case of Germany, the "Third Relief Package," which comprises measures like imposing levies on electricity producers' windfall profits to finance an electricity price brake, one-off payments to students and other low-income households, and greater support for particularly energy-intensive companies: see https://www.bundesregierung.de/breg-en/news/third-relief-package-2123130 (accessed: 25 I 2025).

[14] See Article 6–11 of the Council Regulation (EU) 2022/1854 of 6 X 2022 on an emergency intervention to address high energy prices (OJ L 261 I, 7 X 2022, pp. 1–21), which stipulate a mandatory cap on market revenues of producers obtained from the generation of electricity.

[15] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – REPowerEU Plan, Brussels, 18 V 2022, COM(2022) 230 final.

diversify energy supplies, quickly substitute fossil fuels by accelerating Europe's clean energy transition, and smartly combine investments and reforms.[16] It does not replace the Fit for 55 proposals but instead modifies them, in particular, the envisioned trajectory since the phase out of Russian fossil fuels should be achieved much earlier.[17] Although at that point the negotiations on the revision of the RED were already ongoing, the Commission proposed additional changes to the Directive, including raising the renewables target to 45% by 2030.[18]

The REPowerEU plan included the adoption of the Emergency Regulation by the Council.[19] To speed up the deployment of renewable energy sources, it allows the Member States to simplify the procedures for permitting renewable energy plants as well as energy storage and electricity grid projects essential to integrate renewable energy into the power system. The Emergency Regulation was based on Article 122 (1) TFEU and adopted quickly without the European Parliament. Since this is problematic in itself from the democratic legitimacy point of view and because Article 122 TFEU has been used more frequently in the recent past,[20] discussions in legal scholarship about its appropriateness as a legal basis for economic policy measures whose effects extend beyond the period of application of the Regulation have become more frequent.[21] As crisis measures, any measure based on Article 122 TFEU must be time-limited until the crisis at hand is resolved. However, the case of the Emergency Regulation seems less problematic than other measures like the Next Generation EU (NGEU) measures for example, since the Regulation is clearly a temporal measure and intended only to bridge the period until the revision of the RED comes into force.[22] That

[16] Ibidem, p. 2.

[17] Ibidem, p. 3.

[18] European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022) 222 final, Article 1 (2).

[19] Council Regulation (EU) 2022/2577 of 22 XII 2022 laying down a framework to accelerate the deployment of renewable energy (OJ L 335, 29 XII 2022, p. 36).

[20] M. Chamon, *The rise of Article 122 TFEU*, "VerfassungsBlog," 1 II 2023, available at https://verfassungsblog.de/the-rise-of-article-122-tfeu/.

[21] See, for example, P. Leino-Sandberg, M. Ruffert, *Next generation EU and its constitutional ramifications: a critical assessment*, "Common Market Law Review" 2022, vol. 59, no. 2, p. 448, who warn that Article 122 TFEU might "develop into a new super competence, to be used without effective democratic scrutiny."

[22] See Article 1 (1) and recitals 3 and 8 of Council Regulation (EU) 2022/2577.

being said, some of the Regulation's provisions have been prolonged for 12 months until 30 June 2025 and amended slightly.[23]

The Emergency Regulation introduced an element that is also central to the RED III and which will be further discussed below: To accelerate the permitting process for renewable energy projects, Article 6 of the Emergency Regulation allows for exemptions from certain environmental impact assessment requirements[24] for renewable energy projects, energy storage projects, and electricity grid projects necessary to integrate renewable energy into the electricity system, on condition that the projects are situated in "designated renewable or grid areas." Such areas must have undergone a strategic environmental assessment in line with the Strategic Environmental Assessment Directive (SEA Directive).[25] The competent authority must also apply appropriate and proportionate measures to mitigate the environmental impacts on species protected under the Habitats Directive[26] and the Birds Directive.[27] In cases where such measures are not feasible, the competent authority shall require the operator to provide monetary compensation for species protection programmes aimed at maintaining or improving the conservation status of the affected species.

2. RED III – key innovations

The regulation amending the RED and "transforming" it into the RED III was adopted and published in October 2023. With regard to terminology, it should be noted that the term 'RED IV' is also sometimes used

[23] A detailed analysis of this is provided by E. Thierjung, *Notfall-VO: Ist der Kommissionsvorschlag eine sinnvolle Ergänzung der jüngsten Änderungen der EE-RL?*, "EnK-Aktuell" 2023, art. no. 010273.

[24] Article 2 (1) Directive 2011/92/EU of the European Parliament and of the Council of 13 XII 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28 I 2012, p. 1), hereinafter: "EIA Directive"; Article 12 (1) Council Directive 92/43/EEC of 21 V 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22 VII 1992, p. 7), hereinafter: "Habitats Directive"; Article 5 Directive 2009/147/EC of the European Parliament and of the Council of 30 XI 2009 on the conservation of wild birds (OJ L 20, 26 I 2010, p. 7), hereinafter: "Birds Directive."

[25] Directive 2001/42/EC of the European Parliament and of the Council of 27 VI 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21 VII 2001, p. 30).

[26] Article 12 (1) of the Habitats Directive.

[27] Article 5 of the Birds Directive.

to refer to the updated RED. This is due to the fact that, as shown above, two Commission proposals to amend the RED were published and negotiated in parallel: The first one as part of the Fit for 55 package in June 2021 (RED III) and then, in response to Russian's invasion, another proposal as part of the REPowerEU plan in May 2022 (RED IV).[28] Both proposals were combined in the legislative process and ultimately incorporated into the same amended regulation, now referred to as RED III.

2.1. Increased ambition

An important cornerstone of the reform is the aim to increase the overall share of energy from renewable sources in the EU's gross final consumption of energy to 42.5% by 2030. In addition, although not legally binding, a share of 45% is aimed for.[29] The inclusion of the non-binding aspirational 45% target is the result of a political concession by the conservative majority in the European Parliament and Council to the more progressive voices. A look at the 24% share of renewable energy in 2023[30] makes it clear that the new targets are ambitious. To achieve the increased goal, the European legislator has introduced a new approach addressing the planning and permitting procedure for renewable energy power projects. This new regulatory framework consists of three main elements: Firstly, the planning, construction and operation of renewable energy power plants as well as grid connection and storage facilities are stipulated to be in the overriding public interest and to serve public health and safety according to Article 16f RED III.[31] Secondly, monetary compensation for adverse environmental impacts is facilitated where mitigation measures are not available and other compensatory measures

[28] European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022) 222 final.

[29] See Article 3 (1) RED III.

[30] European Environment Agency, Report 11/2024: Trends and projections in Europe 2024.

[31] In German energy law, a similar provision had already been introduced into the German Renewable Energy Act (EEG) before the adoption of the RED III, § 2 sentence 1 EEG. See on this E. Thierjung, *The Legal Concept of '(Overriding) Public Interest' as an Indicator for Changing Premises in German Energy Law with References to the European Level Focusing on Recent Developments*, "Studia Iuridica" 2023, vol. 98, p. 169.

are deemed disproportionate.[32] Thirdly, Member States are obliged to designate 'Renewables Acceleration Areas' (RAAs) and acceleration areas for related grid and storage facilities in which simplified permitting requirements apply.[33] This third aspect is further elaborated in the next section.

2.2. Planning obligations – designation of Renewables Acceleration Areas (RAAs)

Article 15b, 15c and 16a of the RED III constitute the core of the new approach to renewables acceleration that was already outlined in Article 6 of the Emergency Regulation: Member States are required to designate RAAs in which a simplified permitting procedure applies. Whereas this is optional for the Member States under the Emergency Regulation, it is now obligatory under Article 15b and 15c of the RED III and far more detailed.[34]

The designation consists of two steps to be carried out by the Member States: The mapping of areas necessary to reach the renewables target (Article 15b RED III) and the actual designation of RAAs according to the criteria (Article 15c RED III).

2.2.1. Mapping of necessary areas, Article 15b RED III

As a first step, Article 15b (1) sentence 1 RED III obliges Member States to map by 21 May 2025 the areas within their territories to identify the domestic potential and the available areas necessary for the installation of renewable energy plants and their related infrastructure to meet their national contributions towards the overall renewables target. This mapping does not need to take the form of a binding decision because it is only a preparatory step – an initial selection of the areas that are potentially available for renewables projects to contribute to the target.[35]

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[32] Article 16a (5) RED III.

[33] Article 15c RED III.

[34] Additionally, Article 15e RED III contains provisions on the designation of infrastructure areas. This is optional for the Member States and will not be discussed in this contribution.

[35] D. Römling, *Die Novelle der Erneuerbare-Energien-Richtlinie (EU) 2018/2001 (RED III)*, "Europäisches Umwelt- und Planungsrecht" 2024, vol. 22, no. 3, p. 238. This opinion is

The Regulation does not explicitly quantify the size of the necessary areas that need to be mapped. Although Article 15b (1) sentence 1 RED III refers to "national contributions" towards the EU's 42.5% target, these are not broken down to the Member State level, unlike the Effort Sharing Regulation, for example, which sets out greenhouse gas reduction targets for each Member State.[36] Instead, the obligation can be quantified using the Member States' respective National Energy and Climate Plans (NECPs) because Article 15b (1), subparagraph 2 RED III requires the mapped necessary areas to be commensurate with the renewables trajectories specified there.[37] Germany, for example, has set itself a renewables target of 80% in 2030 in its draft updated NECP for the period 2021–2030.[38] Accordingly, the mapped areas need to be large enough to meet this national target.[39]

Article 15b (2) RED III states three criteria to be used by the Member States when mapping: "(a) the availability of energy from renewable sources and the potential for renewable energy production of the different types of technology in the land surface, sub-surface, sea or inland water areas; (b) the projected demand for energy, taking into account the potential flexibility of the active demand response, expected efficiency gains and energy system integration; (c) the availability of relevant energy infrastructure, including grids, storage and other flexibility tools or the potential to create or upgrade such grid infrastructure and storage."

The wording suggests that at this stage Member States need to apply only energy-related criteria, not environmental ones. Recital 25,

shared by the German government that has commissioned a study titled "Analyse der Flächenverfügbarkeit für Windenergie an Land post-2030" [Analysis of land availability for onshore wind energy post-2030] to carry out the mapping, see the proposal for the transposition of the RED III into German law, Bundestag Drucksache 20/12785, 9 IX 2024, p. 31.

[36] Article 4 (1) and Annex I Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 V 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No. 525/2013 (OJ L 156, 19 VI 2018, p. 26).

[37] J. Wulff, *Die Umsetzung der Erneuerbare Energien-Richtlinie (RED III) in nationales Recht*, "Neue Zeitschrift für Verwaltungsrecht" 2024, p. 372.

[38] Bundesministerium für Wirtschaft und Klimaschutz, Aktualisierung des integrierten nationalen Energie- und Klimaplans Bundesrepublik Deutschland – August 2024, p. 68.

[39] An overview of the updated NECPs can be found here: https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en#national-energy-and-climate-plans-2021-2030 (accessed: 25 I 2025).

on the other hand, states that the mapping should take into consideration the area's "environmental sensitivity in accordance with Annex III" to EIA Directive. While this is not included in the operative text of the Regulation and therefore not legally binding and cannot be relied on as a ground for derogating from the actual provisions of the act,[40] it can still be used to interpret and clarify the provisions of the act according to the established case law of the European Court of Justice (ECJ).[41] In the case of Article 15b(2) RED III, there is no contradiction between the operative text and Recital 25. In addition, the criteria mentioned in Article 15b(2) RED III are to be taken into account "in particular," meaning they are non-exhaustive. It is thus legally permissible – and also expedient – to apply environmental criteria when mapping potential areas according to Article 15b RED III, in order to exclude already at this point areas that cannot be designated according to Article 15c RED III for environmental reasons (see 2.2.2.1 below).[42]

Article 15b (3) RED III obliges Member States to favour multiple uses of the areas to be mapped and demands that renewable energy projects be compatible with pre-existing uses of those areas. This provision has great potential to use space more efficiently as a recent study illustrates: Looking at wind energy in Germany, it concluded that 97–98% of the land surface area needed for wind turbines is usable for other purposes at the same time.[43] Overall, land use conflicts are likely to increase due to a growing number of legal incentives and requirements concerning space. Land is required for energy production, nature and climate protection, transport, agriculture, and other uses.[44] Therefore, establishing the principle of multifunctional use in spatial planning law seems necessary in general.[45] In the case of renewable energy, the combination of

[40] Judgment of ECJ of 19 XI 1998, Case C-162/97, para. 54.

[41] Judgment of ECJ of: 25 XI 1998, Case C-308/97, para. 33; 10 I 2006, Case C-344/04, paras. 69, 70, 75.

[42] M. Deutinger, F. Sailer, *Die Beschleunigungsgebiete nach der Erneuerbare-Energien-Richtlinie. Handlungsnotwendigkeiten und -spielräume bei der Umsetzung in nationales Recht*, "Würzburger Studien zum Umweltenergierecht" no. 35, 8 II 2024, p. 12.

[43] S. Bampinioti, N. Christakou, B. Paulitz, L. Pöhler, A. Stevens, R. Winter, E. Zatsepina, *Land: A crucial resource for the energy transition*, May 2023.

[44] S. Schlacke, D. Plate, *Multifunktionale Flächennutzung: Potentiale und Grenzen des Raumordnungsrechts*, "Zeitschrift für Umweltrecht" 2024, p. 323.

[45] WBGU (German Advisory Council on Global Change), *Rethinking Land in the Anthropocene: from Separation to Integration*, Berlin 2021.

solar energy with agriculture (AgriPV) and the rewetting of peatlands is particularly promising.[46]

2.2.2. Designation of RAAs, Article 15c RED III

Building on the mapping of necessary areas, Member States need to designate RAAs as a subset of the necessary areas by 21 February 2026. Article 2 (2) No. 9a RED III defines RAAs as "a specific location or area, whether on land, sea or inland waters, which a Member State designated as particularly suitable for the installation of renewable energy plants." The suitability of the areas from an energy production perspective (for example, the intensity and duration of solar radiation where photovoltaic systems are concerned or the right wind conditions in case of wind energy) has already been subject to the mapping of necessary areas. Unlike Article 15b RED III, Article 15c RED III requires Members States to use legally binding planning instruments and sets up environmental criteria that need to be met to designate an area as RAA.[47] Like Article 15b RED III, it does not precisely determine the size of the RAAs required. Paragraph 4 explicitly places this question within the remit of Member States, only demanding that the combined size of the RAAs be "significant" and that they contribute to the achievement of the objectives set out in the Directive. There is thus a risk of non-uniform application among the Member States when applying this provision and it is uncertain whether the ECJ will be able to provide clarification when the wording is this open.[48] This is especially true because Article 15c RED III has no equivalent to Article 15b (1), subparagraph 2 RED III, mentioned above, which would suggest a similar interpretation, i.e. that the size of the RAAs needs to be commensurate with the renewables trajectories specified in the Member States' NECPs.

The process of designating RAAs must ensure public participation[49] and is carried out in three stages described below, intending first and foremost to uphold the given standard of environmental protection. However, under certain conditions, it can be abbreviated with regard to

[46] WBGU (German Advisory Council on Global Change), *Biodiversity: Act Now for Nature and Humanity*, Policy Paper #13, Berlin 2024.

[47] J. Wulff, op. cit., p. 372.

[48] M. Deutinger, F. Sailer, op. cit., p. 15.

[49] As detailed in Article 6 of the SEA Directive (2001/42/EC), see Article 15d RED III.

areas that were already designated as suitable areas for the accelerated deployment of renewable energy sources in a preceding procedure.[50] This is supposed to integrate previously designated areas into the RED III and avoid duplication of environmental assessments.[51] One of the applications for this provision concerns areas designated under the Emergency Regulation. However, "re-labelling" these areas as RAAs is not automatic, but requires certain environmental conditions to be met.[52]

2.2.2.1. Exclusion of environmentally sensitive areas

The first condition for the RAA designation is that they need to be sufficiently homogeneous and the deployment of renewable energy sources cannot be expected to have a significant environmental impact, in view of the particularities of the selected area.[53] According to Article 15c (1), point (a)(i) RED III, Member States need to prioritise artificial and built surfaces like rooftops. This makes sense not only from an environmental point of view, as the need for additional spaces is minimised, but also has significant potential for energy production: A study by the EU's Joint Research Centre estimates that EU rooftops could potentially meet approximately a quarter of the current electricity consumption needs.[54] Other areas with low environmental value that should be prioritised include facades of buildings, transport infrastructure and their direct surroundings, parking areas, farms, waste sites, industrial sites, mines, artificial inland water bodies, lakes or reservoirs and degraded land not usable for agriculture.[55]

Article 15c (1), point (a)(ii) RED III excludes certain environmentally sensitive areas from the RAA designation: Natura 2000 sites and areas designated under national protection schemes for nature and biodiversity conservation, major bird and marine mammal migratory routes as

[50] Article 15c (4) RED III.

[51] Recital 31 RED III.

[52] E. Thierjung, *Erleichterungen des Ausbaus der Erneuerbaren Energien durch die EU-Notfall-Verordnung und weitere Änderungen im Umweltrecht*, "Das Deutsche Verwaltungsblatt" 2024, p. 536.

[53] Article 15c (1) point (a) RED III.

[54] K. Bódis, I. Kougias, A. Jäger-Waldau, N. Taylor, S. Szabó, *A high resolution geospatial assessment of the rooftop solar photovoltaic potential in the European Union*, "Renewable and Sustainable Energy Reviews" 2019, vol. 114, art. no. 109309.

[55] See SWD(2024) 333 final, pp. 9–12, with examples on how these areas are already used for renewable energy projects in some Member States.

well as other areas identified on the basis of sensitivity maps and other tools and data. Apart from the Natura 2000 sites, Member States enjoy some freedom as to which environmentally sensitive areas to exclude from the RAA designation. Germany's draft law to transpose the RED III, for example, mentions "nature conservation areas, national parks or core and maintenance zones of biosphere reserves within the meaning of the Federal Nature Conservation Act [Bundesnaturschutzgesetz]" as well as "areas with a nationally significant occurrence of at least one species affected by the deployment of wind energy within the meaning of […] the Federal Nature Conservation Act, which can be determined on the basis of existing data on known species occurrences or on particularly suitable habitats."[56] Other areas protected under the Federal Nature Conservation Act like landscape protected areas (Landschaftschutzgebiete)[57] are not included. However, given that these areas generally enjoy a lower level of protection compared to Natura 2000 areas or the other areas protected by German law,[58] this appears to be an appropriate use of the Member State's discretion.

To identify possible RAAs, i.e. areas where renewable energy plants are not likely to have a significant environmental impact, Member States are required to use all appropriate and proportionate tools and datasets, according to Article 15c (1), point (a)(iii) RED III. The wording "appropriate and proportionate tools and datasets" indicates that incomplete data is not necessarily a reason to exclude an area from the possible RAAs. A lack of knowledge can, in other words, be to the detriment of local biodiversity. Data on bird migratory routes, for example, can be scarce or not available to Member State authorities because it is gathered and kept by research institutions or non-governmental organisations.[59] Member States may have to decide on a case-by-case basis which data to use. One source they may refer to is the European Commission's Energy and Industry Geography Lab,[60] which contains geographical data related to energy, industry and infrastructure like Natura 2000 sites, Important Bird Areas or information on peatlands.

[56] See § 249a of the draft proposal for the transposition of the RED III into German law, Bundestag Drucksache 20/12785, 9 IX 2024, p. 16.

[57] See § 26 Federal Nature Conservation Act [Bundesnaturschutzgesetz] of 29 VII 2009 (BGBl. I p. 2542), as last amended by Article 48 of the law of 23 X 2024 (BGBl. 2024 I Nr. 323).

[58] O. Hendrischke, *§ 26 BNatSchG*, in: *Gemeinschaftskommentar zum Bundesnaturschutzgesetz*, ed. S. Schlacke, 3rd ed., Hürth 2023, para. 2.

[59] SWD(2024) 333 final, p. 12.

[60] See https://energy-industry-geolab.jrc.ec.europa.eu/ (accessed: 25 I 2025).

2.2.2.2. Mitigation rulebook

Secondly, according to Article 15c (1), point (b) RED III, when adopting the plans, Member States need to establish appropriate rules to prevent or, where prevention is not feasible, significantly reduce the adverse environmental impacts of renewables projects. Furthermore, mitigation efforts must be applied in a proportionate and timely manner to ensure compliance with obligations under the Habitats Directive,[61] the Birds Directive,[62] and the Water Framework Directive.[63] These rules adopted at the planning stage are intended to undergo standardisation to some extent; the European Commission refers to them as the "mitigation rulebook."[64]

While the selection process of the RAAs should ideally minimise the environmental impact of the renewable energy projects, negative effects can still occur due to the characteristics of the area concerned and the specific energy technology. Accordingly, the RED III mandates that Member States to incorporate into their RAA plans a framework of rules detailing effective mitigation measures that renewable energy projects must implement and adhere to, aimed at addressing the most probable impacts. If those rules are complied with and appropriate mitigation measures are implemented by the individual projects, they benefit from a rebuttable presumption of compliance with the environmental law mentioned above concerning the protection of habitats, protected species and water.[65]

2.2.2.3. Strategic environmental assessment

Thirdly, the plans need to be subject to a strategic environmental assessment under the SEA Directive and an appropriate assessment according to Article 6 (3) of the Habitats Directive, if they are likely to have a significant impact on Natura 2000 sites.[66] Since Natura 2000 sites are already excluded as possible RAAs according to Article 15c (1), point (a)(ii)

[61] Article 6 (2) and Article 12 (1) Habitats Directive.

[62] Article 5 Birds Directive.

[63] Article 4 (1), point (a)(i) and Article 4 (1), point (a), of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22 XII 2000, p. 1).

[64] SWD(2024) 333 final, p. 8.

[65] See Article 15c (1), subparagraph 3 RED III.

[66] Article 15c (2) RED III.

RED III, the appropriate assessment under Article 6 (3) of the Habitats Directive mostly concerns cases in which an RAA would be located in close proximity to a Natura 2000 site,[67] for example, if a mobile species protected under the site's conservation objectives is affected by collision or killing outside of the site.[68] The purpose of the assessment is to determine the most probable environmental impacts and also evaluate the adequacy of the mitigation rulebook in effectively addressing them.

2.3. The permitting stage, Article 16a RED III

Individual renewable energy projects to be realised within RAAs benefit from a lower level of scrutiny at the permitting stage when it comes to their environmental impacts, as specified by Article 16a RED III. They can still be realised outside of RAAs,[69] subject to the relevant requirements, but the simplifications in substantive environmental law are not as far-reaching as within the RAAs.[70]

Paragraphs 1 and 2 of Article 16a RED III contain procedural provisions limiting the maximum allowed deadlines for the permit-granting procedure: six months for newly installed renewable energy power plants with an electrical capacity of less than 150 kW, for co-located energy storage, as well as for their grid connection; twelve months for offshore renewable energy projects. An extension of up to six months is possible in both cases. These deadlines are halved, according to paragraph 2, in case of repowering, which typically has a lower environmental impact than constructing new facilities, thanks to the use of existing sites and infrastructure.[71]

At the level of substantive law, Article 16a (3) RED III exempts new applications for renewable energy plants from the environmental impact assessment under the EIA Directive. This exemption does not apply,

[67] SWD(2024) 333 final, p. 16.

[68] O. Hendrischke, K. Drewing, *Die Novelle der Erneuerbare-Energien-Richtlinie – Neue Regeln für den Naturschutz (Teil 1)*, "Europäisches Umwelt- und Planungsrecht" 2024, p. 94.

[69] Recital 32 of the RED III. For this reason, the term "go-to areas" used in the legislative proposal is less appropriate than the term RAAs, see M. Deutinger, F. Sailer, op. cit., p. 5.

[70] The permit-granting procedure outside RAAs is regulated by Article 16b and will not be discussed here.

[71] I. Gil-García, A. Fernández-Guillamón, M. Socorro García-Cascales, A. Molina-García, *A Multi-Factorial Review of Repowering Wind Generation Strategies*, "Energies" 2021, vol. 14, no. 19, art. no. 6280.

however, in the case of likely cross-border impacts of the renewables project, i.e. if the project is likely to have significant effects on the environment in another Member State or where a Member State potentially affected so requests, according to Article 7 of the EIA Directive.[72] An appropriate assessment according to Article 6 (3) of the Habitats Directive is not required if the renewable energy project complies with the mitigation rulebook established according to 15c (1), point (b) RED III. Since the planning of RAAs already takes environmental impacts into consideration, there is a rebuttable presumption that renewable energy projects do not have significant effects on the environment.[73]

The environmental assessments mentioned above are replaced by a "screening" laid down in Article 16a, paragraphs 4 and 5 RED III: Instead of the time-consuming and complex assessments of the EIA Directive and the Habitats Directive, the screening process is only meant to determine whether the renewable energy project in question is highly likely to cause significant unforeseen adverse effects, taking into consideration the environmental sensitivity of its geographical location. The screening focuses on impacts that were not identified during the strategic environmental assessment based on the SEA Directive and, where applicable, the Habitats Directive of the plans designating the RAAs. Member State authorities are required to carry out the screening process within 45 days from the date of submission of sufficient information.[74] Paragraph 5 makes it clear that authorising renewables projects within RAAs is now the rule, whereas an EIA for individual projects is the exception. An EIA will only be conducted if "the competent authority adopts an administrative decision, setting out due reasons on the basis of clear evidence, to the effect that a specific project is highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographical area where the project is located that cannot be mitigated by the measures identified in the plans designating acceleration areas or proposed by the project developer."

Taking all of this together, it seems very unlikely that renewables projects in RAAs will in practice be denied a permit because of EU environmental law: The unforeseen adverse effects must be significant, highly likely, occur due to the environmental sensitivity of the geographical

[72] Article 16a (3), subparagraph 1, sentence 2 RED III.

[73] See Article 15c (1), subparagraph 3 RED III and recital 33 of the RED III.

[74] 30 days in case of installations with an electrical capacity of less than 150 kW and in case of repowering, see Article 16a (4), subparagraph 2 RED III.

area, be impossible to mitigate, and the competent authority must present clear evidence. On top of that, Member States can exclude wind and solar photovoltaic projects from the obligation to carry out an EIA even if the screening finds unforeseen environmental impacts.[75] In this case, operators must implement proportionate mitigation measures or, if such measures are unavailable, compensatory actions, potentially including monetary compensation, which has to be used to fund species protection programmes if the adverse impact affects protected species. It will thus be easier to shortcut the mitigation hierarchy that usually applied when a project has negative environmental impacts (avoidance, mitigation, compensation of biodiversity losses through biodiversity gains, monetary compensation) and instead directly adopt compensatory measures in the form of monetary compensation. This is the second element of the RED's new regulatory framework mentioned above (see section 2.1).

3. Evaluation and select issues

The RED III adopts a novel approach with regard to reconciling conflicts between renewable energy deployment and nature conservation: The focus of renewable energy projects' environmental impact is shifting from the permitting stage to the planning stage. As the European Commission has put it in a non-binding guidance on designating RAAs, the idea is to move away from the strict standard of protection according to the EU nature Directives and instead adopt a "strategic vision on possible environmental impacts."[76] Whether the RED III can fulfil the promise of acceleration will depend on a number of factors, some of which are discussed below.

3.1. Focus on weakening EU nature protection law

The RED III not only modifies the procedural law provisions of the permitting process but also the substantive environmental standards of the Habitats Directive, the Birds Directive, and Water Framework Directive. This makes sense insofar as previous approaches that have

[75] Article 16a (5), subparagraph 2 RED III.
[76] SWD(2024) 333 final, p. 2.

focussed on simplifying procedural rules have proven largely ineffective, for example, limiting public participation.[77] Together with the short deadlines foreseen for the decisions of the Member States authorities in permitting procedures,[78] there is indeed great potential for acceleration.

However, it remains to be seen whether the right balance between climate and energy was struck.[79] On a general note, the Habitats Directive and the Birds Directive have had significant achievements, as the European Commission concluded in the 2016 Fitness Check of both Directives: These have demonstrated their effectiveness and efficiency by significantly improving the status and trends of bird species, other protected species, and habitats, which would have deteriorated further without their implementation. Additionally, despite compliance costs of around €5.8 billion annually for Natura 2000 sites, the Directives deliver multiple benefits valued at €200–300 billion per year, driven by increased funding, enhanced stakeholder engagement, and strengthened knowledge-sharing, albeit with room for further scaling.[80] Thus, the pursuit of accelerated renewable energy expansion at the cost of nature conservation warrants critical examination and should be closely monitored.

The same is true for the described stronger emphasis on monetary compensation for negative environmental impacts of individual renewable energy projects (see section 2.3). Bypassing the mitigation hierarchy carries the risk that avoidable biodiversity losses will increase as paying into nature conservation projects is a more attractive and swift

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[77] D. Römling, *Die Novelle…*, p. 242.

[78] S. Schlacke, *Expert opinion in the context of the public hearing of the Committee on Climate Protection and Energy of the German Bundestag on the Federal Government's draft law on the implementation of Directive (EU) 2023/2413 in the areas of onshore wind energy and solar energy and for energy storage facilities at the same location*, BT-Drs. 20/12785, 20/13253, 16 X 2024, https://www.bundestag.de/resource/blob/1024706/493a49b7fbb977a77a66d8fcac65279d/Stellungnahme_SV_Prof_Dr_Sabine_Schlacke_Uni_Greifswald.pdf (accessed: 25 I 2025).

[79] Answering the question about the right balance in the affirmative C. Kliem, *Die novellierte Richtlinie zur Förderung erneuerbarer Energien – Kommt der Turbo für das Genehmigungsverfahren?*, "Zeitschrift für Neues Energierecht" 2023, p. 468.

[80] Commission Staff Working Document, Fitness Check of the EU Nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC of the European Parliament and of the Council of 30 XI 2009 on the conservation of wild birds and Council Directive 92/43/EEC of 21 V 1992 on the conservation of natural habitats and of wild fauna and flora, 16 XII 2016, SWD(2016) 472 final, p. 5.

option for operators of renewable energy power plants. Depending on the projects funded, the biodiversity gains made this way can be uncertain and will depend on proper implementation and monitoring through the Member States, whereas the loss in species and habitats occurs immediately.[81]

3.2. Uncertainty about the new rules

The complexity of the new rules and inadequate staffing could be an impediment to speeding up renewable energy deployment. On the first point, as shown above, Member State authorities need to fulfil several new legal obligations in spatial planning and permitting procedures, especially the mapping and RAA designation according to Articles 15b and 15c, as well as the screening according to Article 16a RED III. These new obligations must be reconciled in a coherent and effective way with the diverse and long-established legal regimes of planning and permitting law in the Member States. If discussions in German legal scholarship and practice around the draft law transposing the RED III serve as an example, implementation may be a challenge for Member State authorities.[82] Among the legal questions that need to be clarified is the exact size of the RAAs required. As shown above,[83] this question cannot be answered in a satisfying way using the RED III alone. Furthermore, concerning the RAA designation, the question of whether only existing data should be utilized or if new data such as species occurrence mapping should also be collected remains unresolved. Some of the terminology used in Article 15c (1), subparagraph 1, point (a)(iii) RED III ("data sets" and "available data") suggests the former. On the other hand, the Directive's reference to the use of "all appropriate and proportionate instruments" leans towards a broader interpretation, particularly given that in the context of the screening, the data basis is expressly confined to

[81] S. Kingston, V. Heyvaert, A. Cavoski, *European Environmental Law*, Cambridge 2017, p. 441 et seq.

[82] See, for example, the points raised in a public hearing of the Committee on Climate Protection and Energy of the German Bundestag on the Federal Government's draft law on the implementation of Directive (EU) 2023/2413 in the areas of onshore wind energy and solar energy and for energy storage facilities at the same location, BT-Drs. 20/12785, 20/13253, available at: https://www.bundestag.de/ausschuesse/a25_klimaschutz_und_energie/anhoerungen/20-12785-1022262 (accessed: 25 I 2025).

[83] Sections 2.2.1 and 2.2.2 above.

existing data, see recital 35.[84] The European Commission also recognises the need for clarification, as it has issued multiple guidance documents on the issue after the RED III's adoption.[85] While this can be useful, it is, of course, not a binding and authoritative interpretation of the existing law.[86] Thus there remains a degree of legal uncertainty when it comes to transposing and implementing the RED III.

3.3. Multiple uses – potential not realised

While it is to be welcomed that Article 15b (3) RED III obliges Member States to favour multiple uses when mapping the necessary areas, its effectiveness in alleviating land use conflicts will depend to a large degree on the Member States. That is because the Directive only demands that Member States "favour" multiple uses and lacks any further specification (including a definition of multiple uses), except that renewable energy projects shall be compatible with pre-existing uses of the areas. Likewise, recital 27 of the RED III only asks the Member States to "explore, enable and favour multiple uses" and to "facilitate changes in land and sea use where required, provided that the different uses and activities are compatible with one another and can co-exist." All that can be inferred from this is the aim of selecting areas with minimal conflict to mitigate the risk of protracted disputes.[87] With the wording of Article 15b (3) RED III, it seems unlikely that the European Commission

[84] M. Deutinger, F. Sailer, op. cit., p. 21.

[85] Commission Recommendation (EU) 2024/1343 of 13 V 2024 on speeding up permit-granting procedures for renewable energy and related infrastructure projects (OJ L, 21 V 2024); Commission Staff Working Document, Guidance on designating renewables acceleration areas. Accompanying the document Commission Recommendation on speeding up permit-granting procedures for renewable energy and related infrastructure projects SWD(2024) 333 final; Commission Staff Working Document, Guidance to Member States on good practices to speed up permit-granting procedures for renewable energy and related infrastructure projects. Accompanying the document Commission Recommendation on speeding up permit-granting procedures for renewable energy and related infrastructure projects, SWD(2024) 124 final. Another guidance document will be published on multiple uses of areas, see SWD(2024) 333 final, p. 4.

[86] See, for example, ECJ Case C-226/11, *Expedia*, para. 30; Case C-133/79, *Sucrimex*, para. 16, on similar guidance documents. On EU soft law in general, see O. Ştefan, *Soft Law in Court*, p. 190. For an overview of the non-binding character, see M. Gurreck, *Informelle Administrativnormen im Unionsrecht*, Baden-Baden 2023, pp. 214–223.

[87] M. Lau, K. Wulfert, L. Vaut, H. Köstermeyer, J. Blew, *RED: Auseinandersetzung mit rechtlichen und fachlichen Fragen*, short paper from 2 V 2024, p. 3, https://www.

will be able to enforce the obligation, possibly through infringement proceedings, because "favouring" only constitutes an obligation of effort, not an obligation of result. Member States are likely to fulfil this obligation already if the consideration of multiple uses is incorporated into the decision-making process and not completely disregarded. It is therefore up to the Member States to specify the rules on multiple uses. To support this, the European Commission has announced that it will publish a dedicated guidance on multiple uses.[88] To implement Article 15b (3) RED III, the introduction of a new guiding principle of multifunctional land use into planning law was rightly proposed for German law in legal scholarship.[89] This could change the practice of spatial planning and place multifunctional land use on the same level as other guiding principles, such as sustainable land use.

3.4. Member State capacity for implementation

While the changes to substantive environmental law certainly have the potential to speed up the deployment of renewables, Member State authorities also need to be appropriately staffed to implement the new provisions.[90] As has been remarked in the German context, even without any legislative changes, ensuring sufficient human resources in the permitting authorities would lead to faster procedures for renewables[91] and other projects.[92] Where authorities lack trained personnel, decisions made by the authorities are more susceptible to successful legal challenges, often following protracted court proceedings.[93] This is especially true in the case of the RED III since, as shown above, it incorporates complex and novel elements that the competent authorities are not yet familiar with. Therefore, bringing about renewables acceleration requires addressing this and other obstacles as well.

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natur-und-erneuerbare.de/fileadmin/Daten/Download_Dokumente/240502_Kurzpapier_Fragestellungen_RED.pdf (accessed: 25 I 2025).

[88] SWD(2024) 333 final, p. 4.

[89] S. Schlacke, D. Plate, op. cit., p. 329.

[90] SWD(2024) 333 final, p. 4.

[91] Sachverständigenrat für Umweltfragen (SRU), *Klimaschutz braucht Rückenwind: Für einen konsequenten Ausbau der Windenergie an Land*, 2022, p. 51.

[92] M. Burgi, M. Nischwitz, P. Zimmermann, *Beschleunigung bei Planung, Genehmigung und Vergabe*, "Neue Zeitschrift für Verwaltungsrecht" 2022, p. 1324.

[93] D. Römling, *Analyse der Ursachen von Verzögerungen von Planungs- und Zulassungsentscheidungen für Erneuerbare Energien-Anlagen*, Berlin 2023, p. 19.

Conclusion

The latest reform of the RED presents itself as a continuation and modification of the approach introduced by the Emergency Regulation: The RED III now contains planning obligations for the Member States who are required to designate RAAs, following a mapping of suitable areas. Within the RAAs, renewable energy projects benefit from special permitting provisions. The Directive sets the maximum deadlines allowed for the permitting procedure and exempts renewables projects from environmental impact assessments, according to the EIA Directive and appropriate assessment according to Article 6 (3) of the Habitats Directive. Instead, a "screening" is supposed to detect significant negative impacts of individual projects that were not foreseen when designating the RAAs.

The reform has great potential to accelerate the deployment of renewable energies. However, some provisions, like the one on multiple uses of space, remain vague and their effectiveness for achieving the Directive's goals will depend largely on the Member States further specifying them. The deadlines for transposition of the Directive are rather short: The mapping of the necessary areas and the designation of the RAAs is to be achieved by 21 May 2025 and 21 February 2025, respectively. This, along with the legal uncertainties that persist, makes the transposition and implementation by the Member States challenging.[94] They will also need to address other obstacles to speeding up the renewables roll-out, among them appropriate staffing of the competent authorities.

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[94] The European Commission seems particularly determined to enforce the RED III: Already in July 2024, is has opened infringement procedures against 26 Member States (all except Danmark) for failing to transpose into national law the RED III's permitting acceleration provisions of Article 16 (not discussed in this article), see https://energy.ec.europa.eu/news/september-infringement-package-key-decisions-energy-2024-09-26_en (accessed: 25 I 2025).

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