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THE SPATIAL AND TEMPORAL CHALLENGES OF THE ENERGY TRANSITION

Part I: Presentation

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Starting Point: Renewables and Land Use Commitments

1. Renewables share: > 42,5 % by 2030 (from 22,5% in 2022), Art. 3(1) RED III

2. Various commitments (binding and non-binding):

- UN: - 30% restoration and 30% protection, see targets 2 & 3 Global Biodiversity Framework
- EU: - Art. 1(2) Nature Restoration law: restoration measures on 20%
 - Biodiversity Strategy: 30% protected areas (10% strict protection)
 - CAP conditionality: need to reserve at least 4% of agricultural land for biodiversity
- DE: - Designate 2% on land for wind energy (§ 6 WindBG)
 - Reduce land take to below 30 ha/day
 - Special consideration for agricultural land (§ 16 Landwirtschafts- und Landeskulturgesetz BW)

3. Need to reconcile different interests

- Ex.: DE -> study by Thünen Institute: competition for land increases; need prioritise and use synergies

How are the recent legislative developments addressing the spatial dimension?

- RED III (2023/2413)
- Emergency Regulation (2022/2577)
- Proposed prolongation (COM(2023) 763 final)
- Nature Restoration Law (NRL, Compromise Text - approved by EP ENVI on 29 Nov. 2023)

RED III -> Planning and permitting

a) **Planning** - three types of areas:

› (1) Mapping of “**necessary areas**”, **Art. 15b** (obligatory)

› “coordinated mapping [...] to identify the domestic potential and the available [...] areas that are necessary for the installation of renewable energy plants and their related infrastructure [...] that are required in order to meet at least their national contributions towards the overall Union renewable energy target for 2030 set in Article 3(1).”

› Deadline: by 21 May 2025 → too ambitious?

› Para. 3, recital 27: **favour multiple uses of areas** = synergies with i.a. food production, nature restoration

› Enforceability of obligation to “favour”?

- › (2) Designating “**renewables acceleration areas**”, Art. 15c&15d (obligatory)
 - › Art. 2 Nr. 9a: „area designated as particularly suitable for the installation of renewable energy plants”; „significant“ size; contribution to achievement of renewables objective (para. 3)
 - › Para. 1 point a: Land use efficiency; no significant environmental impact expected; outside Natura2000 & other biodiversity areas
 - › Para. 1 point b: “**establish appropriate rules for the renewables acceleration areas on effective mitigation measures** [...] in order to avoid the adverse environmental impact that may arise or, where that is not possible, to significantly reduce it, where appropriate ensuring that appropriate mitigation measures are applied in a proportionate and timely manner to ensure compliance with the obligations laid down in [*HD, BD, WFD provisions*]. -> **what standard?**
 - › Complying with the “appropriate rules” -> rebuttable presumption: project does not breach environmental law
 - › Para. 2: environmental assessments required: SEA Directive (2001/42/EC) and Art. 6(3) HD (if applicable -> likely significant impact on Natura 2000 sites)
- › (3) Designating “**areas for grid and storage infrastructure**”, art. 15e (voluntary)

b) Permitting:

- › Rules depending on location and technology of the project
- › Rule of general application: **Overriding public interest and serving public health and safety, Art. 16f**
 - › Rebuttable presumption in individual decision for the purposes of
 - › Art. 6(4) and Art. 16(1), point (c) HD
 - › Art. 4(7) WFD
 - › Art. 9(1), point (a) BD
 - › Reversal of burden of proof

b) Permitting:

› **Within** acceleration areas, art. 16a

› Deadlines, para. 1 and 2

› Para. 3: **Exemption from EIA & assessment of Natura 2000 implications** (Art. 6(3) HD), when compliant with “appropriate rules”

› Para. 4: **Screening process** “to identify if any of the renewable energy projects is highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographical areas where they are located, which were not identified during the environmental assessment of the plans designating renewables acceleration areas”

› Para. 5: Environmental assessments within 6 months only when -> Clear evidence of highly likely significant unforeseen adverse effects that cannot be mitigated by the measures identified in the plans designating acceleration areas or proposed by the project developer

› ...unless MS exempts wind & solar from assessments -> mitigation/(monetary) compensation

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b) Permitting:

- › **outside** acceleration areas, Art. 16b
 - › Para. 1: Deadlines
 - › Para. 2: EIA and assessments according to HD -> carried out in a single procedure
 - › Member State authority issues an **opinion on the scope and level of detail** of environmental impact assessment report
 - › Risk of low standards in practice?
 - › Legal nature of and judicial review against “opinion”?
 - › When **necessary mitigation measures** adopted: killing or disturbance of protected species protected not deliberate under Art. 12(1) HD and Art. 5 BD
 - › “necessary mitigation measures”?
- › **Technology-specific** (repowering, art. 16c; solar energy equipment, art. 16d; heat pumps, art. 16e)

Proposed Prolongation of Emergency Regulation

› Art. 122 TFEU still applicable?

› Necessity/appropriateness of **3a (satisfactory alternative solutions test)**?

-> For the purposes of Art. 6(4) and 16(1) of [HD], Art. 4(7) of [WFD] and Art. 9(1) [BD]: condition fulfilled if there are no satisfactory alternative solutions capable of achieving

- the same objective of the project in question (same renewable energy capacity)
- through the same energy technology
- within the same or similar timeframe and
- without resulting in significantly higher costs.”

› Application until 30 June 2025: Overlap with RED III possible

› Extending the scope of Art. 15c(4) RED III (integration clause)?

› Incentive to use Art. 15c(4) RED III because of lower environmental safeguards?

› No: prior mapping (Art. 15b); favouring multiple uses; Art. 15c(1) point a; public participation (Art. 15d); screening (Art. 16a(4) RED III) vs mitigation/compensation (Art. 6 Emergency Regulation)

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Nature Restoration Law

- › **Soft language**, ex. Art. 4(6)&(7) on **non-deterioration**: MS shall “put in place measures which shall aim to ensure” non-deterioration; “endeavour to put in place necessary measures with the aim to prevent significant deterioration[...]”
- › Art. 5a: Non-deterioration rules and renewables OPI rules
 - › Relationship between Art. 5a NRL, 16f RED III and art. 6(4) HD
 - › Art. 5a NRL restricted to deterioration outside N2K sites...
 - › ...but Art. 4(9) point c & Art. 5(9) point c NRL make reference to art. 6(4) HD authorisations...
 - › ...which Art. 16f RED III facilitates.
 - › Potential abuse of OPI rule for other projects (buildings, streets, etc.)?
- › Art. 5a: alternative solutions test

Nature Restoration Law

- › **Restoration plans:** Identify measures and quantify restoration areas
 - › Identifying synergies with i.a. climate change mitigation/adaptation
 - › But rather weak on rewetting of peatlands, Art. 9
 - › Identify synergies with agriculture and forestry, Art. 11(5a)
 - › But no obligation to use CAP money, para. 5b
 - › But temporary suspension possible, Art. 22a
 - › Coordinate restoration plans with RED III mapping and acceleration areas, Art. 11(6)
 - › Bias in favour of renewables: “ensure that the functioning of these renewables areas, including the permitting procedures [...] remain unchanged.”
 - › Ensure synergies with and maintain integrity of renewables build-up, Art. 11(6)
 - › Encouragement of esp. AgriPV? See also JRC Brief 2022

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	Emergency Regulation 2022/2577	Proposed prolongation	RED III	Nature Restoration Law
OPI for individual projects	<ul style="list-style-type: none"> - Art. 3, Recital 8 - for the purposes of Art. 6(4) and Art. 16(1)(c) HD, Art. 4(7) WFD and Art. 9(1)(a) BD - regardless of location - Para. 2: priority to the OPI projects whenever a balancing of legal interests is required in the individual case 	[no changes]	<ul style="list-style-type: none"> - Art. 16f. - for the purposes of Art. 6(4) and Art. 16(1)(c) HD, Art. 4(7) WFD and Art. 9(1)(a) BD - regardless of location - no priority provision 	Art. 5a <ul style="list-style-type: none"> - non-deterioration obligations in Art. 4 and 5 - only outside of Natura2000 sites
Alternative solutions test for individual projects		Facilitating the alternative solutions test (Art. 6(4) HD), Art. 3a	[Follows de facto from mapping and designating areas]	Art. 5a sentence 2
Designating areas to shift env'tl assessments to spatial planning	Art. 6 <ul style="list-style-type: none"> - general exemption from species protection assessments (Art. 12(1) HD & Art. 5 BD) 	[no changes]	<ul style="list-style-type: none"> - Art. 15b – mapping - Art. 15c&15d – renewables acceleration areas - Art. 15e – infrastructure areas - Exemptions from species protection assessments only for grid and storage projects, para. 2 	Art. 11 „preparatory monitoring and research“; „quantify the area that needs to be restored”
Multiple uses			Art. 15b(3), Recital 27	Art. 11(5)(5a)(6): coordinate & ensure synergies with renewables deployment

Questions/issues

- Land use conflicts solved mostly in favour of renewables and at the expense of nature protection?
 - › Short-term vs. medium-/long-term
- Need for prolongation of Emergency Regulation when RED III is in place?
- Appropriateness of the “planning approach”?
 - › Burdensome for Member State authorities and complicated; constantly changing legal framework
 - › See missed targets of the WFD
- Biggest potential for more efficient land use outside of energy & nature sectors -> CAP subsidies/food policy
 - › Need to regulate across sectors (energy, nature, agriculture)? How?
 - › How to create more binding requirements for synergies in planning law?
 - › Develop positive aspect of RED III and NRL on multiple uses/synergies further

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Part II: Reactions from Speakers:

- *Marta Andres Vaquero* (EU Commission - DG ENER), *Slavitza Dobрева de Schietere* & *Stefania Charisiadou* (EU Commission - DG ENV)
- *Kenny Meganck* (Institute for European Environmental Policy)
- *Carla Freund* (BirdLife Europe/NABU)
- *Laura Sanaz Kaschny* (Tilburg University)
- *Timo Herberz* (German Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection)



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