Stiftung Umweltenergierecht

EU legal framework on spatial planning for Wind and PV

Changes due to the RED III and the renewables acceleration areas

DFBEW: Wind und PV in der Raumplanung – Zwischen Ausbauzielen, Verfahren und Flächenverfügbarkeit

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Researching the legal framework of the energy transition

- Non-profit, specialised research institute
- Guiding Question: How must the legal framework change in order to achieve energy and climate policy goals?
- Interdisciplinary research partners, close exchange with practice
- Scholarly debate and advice in legislative processes

Agenda

- Context: RED III and renewables acceleration areas
- Designation of renewables acceleration areas (Articles 15b, 15c RED III)
- Permit-granting procedure in renewables acceleration areas (Article 16a RED III)
- Conclusion

Context: RED III and renewables acceleration areas

What is it all about?

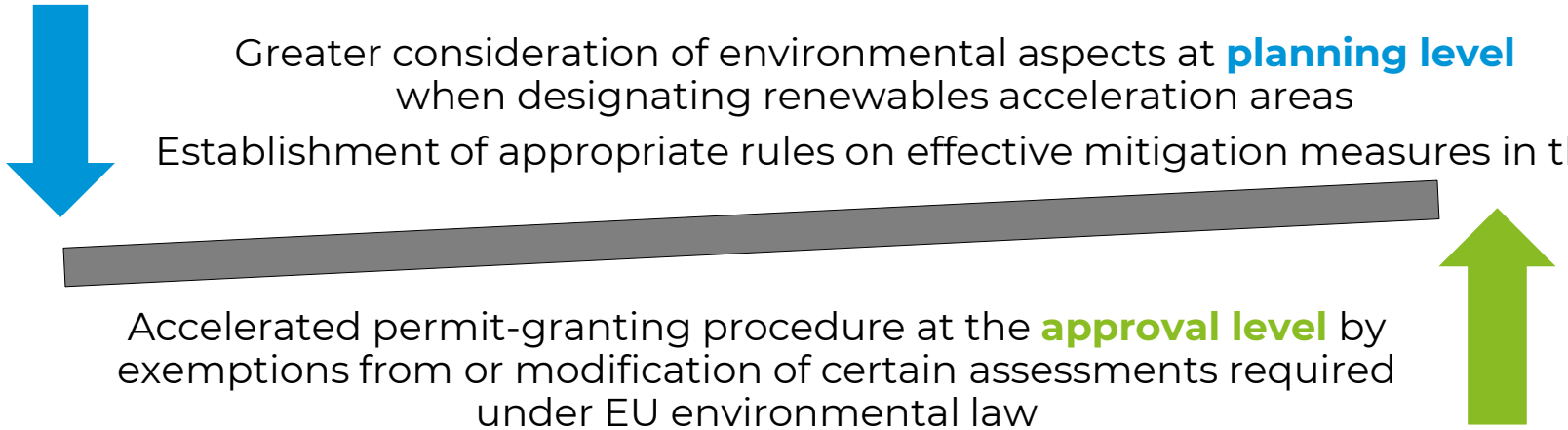
- RED = Abbreviation for Renewable Energy Directive
- Amendment of the Renewable Energy Directive (EU) 2018/2001 („RED II“) by Directive (EU) 2023/2413 of 18 October 2023 („RED III“)
  - Overarching objective: achieving the Union's climate targets & ensuring security of energy supply
  - Therefore: simplification and acceleration of the permit-granting procedures for renewable energy plants, grids and storages
  - Key element: renewables acceleration areas
- Directive must be transposed into national law
  - Designation of renewables acceleration areas (Article 15c RED III): Deadline for transposition 21 February 2026
  - Permit-granting procedure in renewables acceleration areas (Article 16a RED III): Deadline for transposition 21 May 2025

What are renewables acceleration areas and how do they ensure acceleration?

- Legal definition in Article 2(2)(9a) RED III:

  “renewables acceleration area” means 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

- But: installation of renewable energy projects remains possible outside the renewables acceleration areas (no exclusion effect)
- Acceleration through “up-zoning” of environmental requirements to the upstream planning level



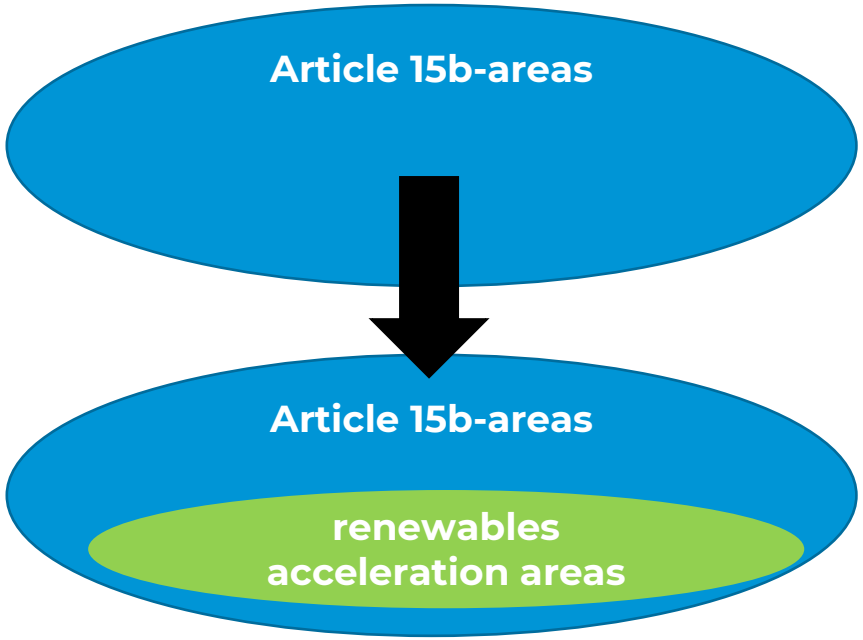
Designation of renewables acceleration areas

(Articles 15b, 15c RED III)

Mapping (Article 15b RED III)

1st Step: Mapping of areas necessary for national contributions towards the overall Union renewable energy target for 2030 (Article 15b)

- By 21 May 2025
- Identification of the **domestic potential** and the **available surface** 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 EU-wide renewable energy target for 2030
- Primarily based on **energy factors**: availability of energy from renewable sources, potential for renewable energy production, availability of relevant energy infrastructure *(list not exhaustive)*



2nd Step: Designation of renewables acceleration areas (Article 15c)

- By 21 February 2026
- Based on **environmental factors**: In which areas is the deployment of a specific type of renewable energy sources “not expected to have a significant environmental impact”?
- Establishment of **appropriate rules on effective mitigation measures** in the plans for the designation of renewables acceleration areas

Obligation and scope of designation

Obligation to designate renewables acceleration areas:

- Reference to the targets of the integrated national energy and climate plan (NECP):
  - Mandatory designation for those types of renewable energy technologies foreseen in the NECP?
  - Also for those types of renewable energy technologies, for which the national targets are likely to be achieved even without renewables acceleration areas?
- Explicit exemption option in the RED III only for biomass combustion and hydropower plants (Article 15c(1), subpara. 1 sentence 2 RED III)

Scope of the designation (Article 15c(3) RED III):

- Principle: Discretion of the Member States to decide on the size of acceleration areas
- But: Member States shall aim to ensure that the combined size of those areas is significant and that they contribute to the achievement of the objectives set out in the RED III

Requirements for the designation (Article 15c(1) and (2) RED III)

1) No significant environmental impact expected

> „designate sufficiently homogeneous land, inland water, and sea areas where the deployment of a specific type or specific types of renewable energy sources **is not expected to have a significant environmental impact**, in view of the particularities of the selected area (...)“

- giving priority to artificial and built surfaces
- excluding Natura 2000 sites and areas designated under national protection schemes for nature and biodiversity conservation, major bird and marine mammal migratory routes

2) Establishment of appropriate rules on effective mitigation measures in the plans

- to avoid the adverse environmental impact that may arise or, where not possible, to significantly reduce it
- to ensure compliance with the obligations laid down in Article 5 of the Birds Directive, Article 6(2) and Article 12(1) of the Habitats Directive and Article 4(1)(a)(i) and (ii) of the Water Framework Directive
- measures with a generally high level of protection to adress typical risk/conflict situations

3) Formal requirements

designation act, strategic environmental assessment pursuant to Directive 2001/42/EC and where appropriate assessment of implications for Natura 2000 sites

Simplified declaration of renewables acceleration areas (Article 15c(4) RED III)

By 21 May 2024, Member States **may declare** as renewables acceleration areas specific **areas which have already been designated** to be areas suitable for an accelerated deployment of renewable energy technology, provided that all of the following conditions are met:

- such areas are outside Natura 2000 sites, areas designated under national protection schemes for nature and biodiversity conservation and identified bird migratory routes;
- the plans identifying such areas have been the subject of a strategic environmental assessment pursuant to Directive 2001/42/EC and, where appropriate, of an assessment of implications for Natura 2000 sites;
- the projects located in such areas implement appropriate and proportionate rules and measures to address the adverse environmental impact that may arise.

→ **No designation procedure with the requirements of Article 15c(1) and (2) RED III needed**

→ **No need to establish appropriate rules on effective mitigation measures in the plans**

Permit-granting procedure in renewables acceleration areas

(Article 16a RED III)

Permit-granting procedure in renewables acceleration areas

Provided that the project complies with the rules and measures established in the plans designating renewables acceleration areas:

1) **Exemption** from the requirement to carry out an environmental impact assessment and an assessment of their implications for Natura 2000 sites (Article 16a(3) RED III)

2) **Presumption** that project is not in breach of those provisions (Article 15c(1), subpara. 3):
   - Article 5 of the Birds Directive,
   - Article 6(2) and Article 12(1) of the Habitats Directive and
   - Article 4(1)(a)(i) and (ii) of the Water Framework Directive

   → modification of assessments under these directives

but

Screening (Article 16a(4) RED III): Identification if the renewable energy project
- **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.

Compliance with other EU environmental legislation or national legislation (monument protection law, aviation law, etc.) remains unaffected and must be examined as before!

Screening requirements (Article 16a(4) and (5) RED III)

Deadlines for screening process:

- 45 days from the date of submission of sufficient information necessary for the screening process
- 30 days in the case of installations with an electrical capacity of less than 150 kW and new applications for the repowering

Data basis:

Project developer shall provide information on the characteristics of the project, on its compliance with the rules and measures established in the plans, on any additional measures adopted by the project developer

→ **only available information**, no new assessment or data collection required

If there are due reasons on the basis of clear evidence, that a specific project is highly likely to give rise to significant unforeseen adverse effects:

Principle: Environmental impact assessment and, if applicable, assessment pursuant to Habitats Directive within 6 months

Where Member States exempt wind and solar photovoltaics projects from those assessments: **Cascade of measures**
(1.) mitigation measures, if not available (2.) compensatory measures, if not available (3.) monetary compensation
→ No refusal due to certain assessments required under Birds, Habitats and Water Framework Directive

Conclusion

Conclusion

- As climate protection measures, renewable energy plants are subject to a special permitting regime
- New: Renewables acceleration areas
  - offer considerable simplification and acceleration potential in the permit-granting procedure as certain assessments required under EU environmental law can be omitted or modified
  - in turn increase the environmental requirements at planning level when designating renewables acceleration areas

  → "*up-zoning*" of environmental requirements to the upstream planning level
- Requirements of the RED III are partly imprecise, partly incomplete, partly contradictory
- Acceleration effect largely depends on the transposition into national law

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