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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee/Council |
| No. Cion doc.: | ST 9363/22 |
| Subject: | 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 - General approach |

I. INTRODUCTION

1. On the 18th of May 2022, the European Commission presented its REPowerEU plan as a response to the global energy market disruption caused by Russia's invasion of Ukraine. As part of the REPowerEU plan, the Commission has proposed a new REPowerEU legislative initiative proposing a series of targeted amendments to existing legislation in the energy field, namely to Directive 2018/2001/EU (the Renewable Energy Directive – “RED”), Directive 2010/31/EU (the Energy Performance of Buildings Directive – “EPBD”), and Directive 2012/27/EU (the Energy Efficiency Directive – “EED”).

2. Most of the targeted amendments contained in the REPowerEU initiative concern the RED. The Commission proposes to raise the required share of renewable energy sources (RES) in EU final energy consumption to 45 % by 2030. This RES share is higher than the 40 % proposed by the Commission in its Fit for 55 proposal (July 2021) and agreed by Member States as part of the General Approach on this directive in June 2022. Furthermore, the Commission's proposal includes enhanced measures to accelerate permitting procedures for new RES power plants or adaptation of existing RES installations.
3. The proposal was presented to the Working Party on Energy on 20 May 2022. The Presidency aimed at integrating the proposed targeted amendments into the ongoing negotiations of the EED, RED and EPBD. The different elements of the proposal were discussed separately at the occasion of several working groups, involving, as appropriate, environmental colleagues. Against this background, EED and EPBD elements have been incorporated in the relevant sectoral negotiations.
4. Regarding the renewables elements of the proposal, the Presidency published the first revision of the Commission's proposal (REV1) on the 13th of September. This version was further discussed at a joint ENVI-ENER working party.
5. On the basis of the feedback received, in the following weeks, the Presidency issued a second (REV2) and a third revision (REV3) of the Commission's proposal.
6. At the Extraordinary TTE(Energy) Council on the 24 of November, Ministers agreed on the content of the Council Regulation setting out a short term emergency framework for the permit-granting process of certain RES technologies.
7. On the basis of further comments received, on the 7th of December a fourth revision of this initiative (REV4) was presented and discussed at COREPER.
8. In the European Parliament, the REPowerEU initiative was referred to the Industry, Research and Energy Committee (ITRE). Mr. Markus Pieper (EPP, Germany) was appointed as rapporteur. On the 14 of September, ITRE voted in favour the report prepared by the rapporteur, supporting an increase of the 2030 RES target to 45% by 2030. The vote in plenary is foreseen for the 14 of December.

II. STATE OF PLAY

1. On the basis of the discussion at COREPER on the 7th of December, the Presidency is presenting today a fifth version (REV5) of the REPowerEU proposal with the aim of setting up the long-term regulatory framework to accelerate permitting procedures for RES projects.
2. In the current revision: new text is in **highlighted in bold underlined**, whereas deleted text is ~~highlighted in strikethrough~~. Previous amendments are reported in **bold underlined** whereas previously deleted text is in ~~strikethrough~~. Provisions related to the Energy Performance of Buildings Directive and Energy Efficiency Directive are deleted and marked with [■] since those will be discussed in the context of the parallel negotiations devoted to the specific legislative proposals.
3. The following main changes have been introduced:
 - a. In Article 15b, para (1) it was clarified that the areas necessary for the installation of plants for the production of energy from renewable sources include the existing plants, together with cooperation mechanisms.
 - b. In Article 15c, para (1) it was clarified that Member States shall decide the size of renewable go-to areas in view of the specificities and requirements of the technology or technologies for which they set up renewables go-to areas.
 - c. In Article 16a para (1), the permit-granting process for offshore was prolonged to two years in order to reflect particularities of offshore renewable energy. In para (2) it was specified that for the repowering of plants and new installations with an electrical capacity of less than 150 kW offshore wind energy projects shall not exceed one year. In para (3) it was clarified that plants referred to in the first subparagraph, if not subject to Natura 2000 assessment, then comply with the rules and measures set out in accordance with Article 15c(1), point (b).
 - d. Still in Article 16a (4 and 5), the word highly was reinstated.
 - e. In Article 16b para (1), the permit-granting process for offshore was prolonged to three years. In para (2) it was specified that for the repowering of plants and new installations with an electrical capacity of less than 150 kW, offshore wind energy projects shall not exceed two years.

- f. A new Article 16d was introduced, reflecting the requirement of reinforcement of the grid infrastructure due to renewables integration and limiting screening and/or environmental assessment to the potential impacts stemming from the change or extension compared to the original grid infrastructure.
- g. Recitals were amended accordingly to changes in the Articles. A new recital 15a was introduced to clarify the recognition process of renewable go-to areas and avoid a double environmental assessment of a single area. A new recital 21a was introduced to clarify the screening or environmental impact assessment for grid reinforcements.

III. CONCLUSION

1. In light of the above, the Permanent Representatives' Committee is invited to examine the Presidency compromise text as set out in the Annex to this Note in view of the adoption of a general approach at the **Transport, Telecommunications and Energy Council** on the 19 of December 2022.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1) and 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) In the context of the European Green Deal³, Regulation (EU) 2021/1119 of the European Parliament and of the Council⁴ established the objective of the Union becoming climate neutral in 2050, as well as the target of a 55% reduction in greenhouse gas emissions by 2030. This requires an energy transition and significantly higher shares of renewable energy sources in an integrated energy system.
- (2) Renewable energy plays a fundamental role in delivering on these objectives, given that the energy sector contributes today over 75% of total greenhouse gas emissions in the Union. By reducing those greenhouse gas emissions, renewable energy also contributes to tackling environmental-related challenges such as biodiversity loss and to reducing pollution in line with the objectives of the Zero-Pollution Action Plan.
- (5) The Directive (EU) 2018/2001 streamlines the requirements to simplify the administrative procedures for authorising renewable energy plants by introducing rules on the organisation and maximum duration of the administrative part of the permit-granting process for renewable energy projects, covering all relevant permits to build, repower and operate plants, and for their grid connection.

³ Communication from the Commission COM/2019/640 final, The European Green Deal.

⁴ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 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, 9.7.2021, p. 1).

- (6) A further simplification and shortening of the administrative permit-granting processes in a coordinated and harmonised manner is necessary in order to ensure that the Union reaches its ambitious climate and energy targets for 2030 and the objective of climate-neutrality by 2050, while taking into account the “do no harm” principle of the European Green Deal. The introduction of shorter and clear deadlines for decisions to be taken by the authorities competent for issuing the authorisation for the renewable energy installations on the basis of a complete application, will accelerate the deployment of renewable energy projects. **The time during which the plants and their grid connection are built should not be counted within these deadlines except if it is covered by a decision period by the competent authorities.** It is appropriate however to make a distinction between projects in areas particularly suitable for the deployment of renewable energy projects, for which deadlines can be particularly streamlined (renewables go-to areas), and projects located outside those areas. **The particularities of offshore renewable energy projects should be taken into account when setting the deadlines.**
- ~~(7) Some of the most common issues faced by renewable energy project developers relate to procedures established at national or regional level to assess the environmental impact of the proposed projects. Therefore, it is appropriate to streamline certain environmental-related aspects of the permit-granting procedures and processes for renewable energy projects.⁵~~

⁵ **Delegations are informed that this recital would be replaced by recital 10a as agreed by the TTE Council as part of the General Approach on the Renewable Energy Directive.**

- (8) A faster roll-out of renewable energy projects could be supported by mapping ~~strategie planning~~ carried out by Member States. Member States should identify the land, inland water and sea areas necessary for the installation of plants for the production of energy from renewable sources in order to meet at least their national contributions towards the revised 2030 renewable energy target set out in Article 3(1) of Directive (EU) 2018/2001 and in support of reaching the objective of climate neutrality by 2050 at the latest, in accordance with the European Climate Law [Regulation (EU) 2021/1119]. Member States should be allowed to use existing spatial planning documents for the purpose of identifying these areas. Such areas should reflect their estimated trajectories and total planned installed capacity and should be identified by renewable energy technology set in the Member States' updated national energy and climate plans pursuant to Article 14 of Regulation (EU) 2018/1999. Member States should retain the possibility to grant permits outside such areas. Member States should ensure coordination among all the relevant national, regional and local authorities and entities in the identification of the required land and sea areas. The identification of the required land and sea areas should respect the precautionary principle laid down in Article 191 of the TFEU and take into consideration in particular the availability of the renewable energy resources and the potential offered by the different land and sea areas for renewable energy production of the different technologies, the projected energy demand overall and in the different regions of the Member State, and the availability of relevant grid infrastructure, storage and other flexibility tools bearing in mind the capacity needed to cater for the increasing amount of renewable energy, as well as environmental sensitivity in accordance with Annex III of Directive 2011/92/EC.

- (9) Member States should designate, as **a sub-set of those areas, renewables go to areas on specific those land (including surfaces and subsurfaces) and sea or inland water areas as renewable go to areas. These areas should be that are** particularly suitable to develop renewable energy projects, differentiating between technologies, and where the deployment of the specific type of renewable energy sources is not expected to have a significant environmental impact. **Member States should designate such renewables go-to areas for at least one technology and should decide the size of such renewables go-to areas, in view of the specificities and requirements of the technology or technologies for which they set-up renewables go-to areas.** In the designation of renewables go-to areas, Member States should avoid protected areas to the extent possible and consider restoration plans **and appropriate mitigation measures.** Member States may designate renewable go-to areas specific for one or more types of renewable energy plants and should indicate the type or types of renewable energy that are suitable to be produced in each renewable go-to area. **In view of their particularities, it should be possible to exclude biomass combustion plants and hydropower plants may should be excluded from the designation of renewables go-to areas. Member States may also exclude hydropower plants from renewables go to areas.**

- (10) Directive 2001/42/EC of the European Parliament and of the Council⁶ establishes environmental assessments as an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes. In order to designate renewables go-to areas, Member States should prepare a plan or plans encompassing the identification of areas and the applicable rules and mitigation measures for projects located in each go-to area. Member States may prepare one single plan for all renewable go-to areas and technologies, or technology-specific plans identifying one or more renewable go-to areas. Each plan should be subject to an environmental assessment carried out in accordance with the conditions set out in Directive 2001/42/EC in order to assess the impacts of each renewable technology on the relevant areas designated in such plan. Carrying out an environmental assessment in accordance with Directive 2001/42/EC for this purpose would allow Member States to have a more integrated and efficient approach to planning and to take environmental considerations into account at an early phase of the planning process at a strategic level. This would contribute to ramping up the deployment of different renewable energy sources in a faster and streamlined manner while minimising the negative environmental impacts from these projects. **Such environmental assessment should include transboundary consultations between Member States if the plan is likely to have significant effects on the environment in another Member State.**
- (11) Following the adoption of the plan or plans designating renewables go-to areas, Member States should monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action, in accordance with Directive 2001/42/EC.

⁶ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

- (12) The provisions of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters⁷ ('the Aarhus Convention') regarding access to information, public participation in decision-making, and access to justice in environmental matters, in particular the provisions relating to public participation and to access to justice remain applicable, ~~where relevant~~.
- (13) The ~~designation~~ **designated** of renewables go-to areas, **together with existing renewable energy plants, future renewable energy plants outside of such areas and cooperation mechanisms**, should aim to ensure that renewable energy production ~~from these areas, together with existing renewable energy plants, future renewable energy plants outside of such areas and cooperation mechanisms~~, will be sufficient to achieve Member States' contribution to the Union renewable energy target set out in Article 3(1) of Directive (EU) 2018/2001. **The designated renewable go-to areas do not need to be commensurate with the estimated trajectories and total planned installed capacity by renewable energy technology set in the national energy and climate plans of Member States.**

⁷ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

- (14) In the designated renewables go-to areas, renewable energy projects that comply with the rules and measures identified in the plan or plans prepared by Member States, should benefit from a presumption of not having significant effects on the environment. Therefore, there should be an exemption from the need to carry out a specific environmental impact assessment at project level, concerning certain Annex II projects in the Directive 2011/92/EU of the European Parliament and of the Council⁸ with the exception of projects **where Member State has determined to require an EIA in its national mandatory list of projects and of. This directive projects** which are likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests ~~and also where.~~ **T**he obligations under the UNECE Espoo Convention on environmental impact assessment in a transboundary context of 25 February 1991 should remain applicable for Member States where the project is likely to cause a significant transboundary impact in a third country.

⁸ Directive 2011/92/EU of the European parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

(15) The designation of renewables go-to areas should allow renewable energy plants, their grid connection as well as co-located energy storage facilities located in these areas to benefit from predictability and streamlined administrative procedures. In particular, projects located in renewable go-to areas should benefit from accelerated administrative procedures, including, **where deemed appropriate by Member States**, a tacit agreement in case of a lack of response by the competent authority on an administrative step by the established deadline, unless the specific project is subject to an environmental impact assessment, **and with the exception of the final decision on the outcome of the process**. These projects should also benefit from clearly delimited deadlines and legal certainty as regards the expected outcome of the procedure. Following the application for projects in a renewables go-to area, Member States should carry out a fast screening of such applications with the aim to identify if any of such projects is **highly** highly-likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographic area where they are located that were not identified during the environmental assessment of the plan or plans designating renewables go-to areas carried out in accordance with Directive 2001/42/EC **and if any of such projects is subject to transboundary assessment according to Article 7 of the Directive 2011/92/EU due to its likelihood of significant effects on the environment in another Member State or due to request of Member State which is likely to be significantly affected**. All projects located in renewables go-to areas should be deemed approved at the end of such screening process. Only if Member States have clear evidence to consider that a specific project is **highly** highly-likely to give rise to such significant unforeseen adverse effects, Member States should, after motivating such decision, subject such project to an environmental assessment in accordance with Directive 2011/92/EC and, where relevant, Directive 92/43/EEC⁹. ~~Given the need to accelerate the deployment of renewable energy sources, such assessment should be carried out within six months.~~

⁹ Council Directive 92/43/EEC of 21 May 1992 on the ~~conservation~~ **conservation** of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992).

(15a) In order to streamline the process of recognition of renewables go-to area and avoid a double environmental assessment of a single areas, it should be possible for Member States to declare areas which have been already designated as suitable for an accelerated deployment of renewable energy technologies under national legislation as renewables go-to areas. This declaration should be subject to certain environmental conditions, ensuring a high level of environmental protection. First, the areas declared as go-to areas should be outside protected areas. Second, the planning documents should have been subject to a strategic environmental assessment to assess the impacts of the deployment of renewable technologies in the relevant areas designated in such plan. Third, there should be mitigation measures in place at project level to address the negative environmental impacts that may arise. The possibility for recognition of renewables go-to areas in existing planification should be limited in time, in order to ensure that it does not jeopardise the standard process for designation of go-to areas.

(16) In view of the need to accelerate the deployment of renewable energy sources, the identification of renewables go-to areas should not prevent the ongoing and future installation of renewable energy projects in all areas available for renewable energy deployment. Such projects should remain subject to the obligation to carry out a dedicated environmental impact assessment in accordance with Directive 2001/92/EU and should be subject to the procedures foreseen for renewable energy projects located outside go-to areas. To speed up permitting at the scale necessary for the achievement of the renewable energy target set out in Directive (EU) 2018/2001, also the procedures applicable to projects outside of go-to areas should be simplified and streamlined with the introduction of clear maximum deadlines for all steps of the procedure, including dedicated environmental assessments per project.

- (17) Multiple use of space for renewable energy production and other land, **inland water** and sea uses (such as food production or nature protection or restoration) alleviates land, **inland water** and sea use constraints. In this context, spatial planning is an important tool to identify and steer synergies for land, **inland water** and sea use at an early stage. Member States should explore, enable and favour the multiple uses of the areas identified as a result of the spatial planning measures adopted.
- (18) The construction and operation of renewable energy plants may result in the occasional killing or disturbance of birds and other protected species under Directive 92/43/EEC or Directive 2009/147/EC¹⁰. However, such killing or disturbance would not be considered deliberate in the sense of these Directives if a project has adopted, during its construction and operation, appropriate mitigation measures to avoid collisions or prevent disturbance, and if it carries out a proper monitoring to assess the effectiveness of such measures and, in the light of the information gathered, takes further measures as required to ensure no significant negative impact on the population of the species concerned.
- (19) In addition to installing new renewable energy plants, repowering existing renewable energy plants has a significant potential to contribute to the achievement of the renewable energy targets. Since, usually, the existing renewable energy plants have been installed in sites with significant renewable energy resource potential, repowering can ensure the continued use of these sites while reducing the need to designate new sites for renewable energy projects. Repowering includes further benefits such as the existing grid connection, a likely higher degree of public acceptance and knowledge of environmental impacts. The repowering of renewable energy projects entails changes to or the extension of existing projects to different degrees. The permit-granting process, including environmental assessments and screening, for the repowering of renewable energy projects should be limited to the potential impacts resulting from the change or extension compared to the original project.

¹⁰ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p.7).

- (20) Directive (EU) 2018/2001 introduces streamlined permit-granting procedures for repowering. In order to respond to the increasing need for the repowering of existing renewable energy plants and to make full use of the advantages it offers, it is appropriate to establish an even shorter procedure for the repowering of renewable energy plants located in go-to areas, including a shorter screening procedure. For the repowering of existing renewable energy plants located outside go-to areas, Member States should ensure a simplified and swift permit-granting process which should not exceed one year, while taking into account the “do no harm” principle of the European Green Deal.
- (21) The installation of solar energy equipment, together with related co-located storage and grid connection, in existing or future structures created for purposes different than solar energy production with the exclusion of artificial water surfaces, such as rooftops, parking areas, roads and railways, do not typically raise concerns related to competing uses of space or environmental impact. These installations therefore may benefit from shorter permit-granting procedures. **Member States may however exclude certain areas or structures from these provisions of due to cultural or historical heritage protection, national defence interests or safety reasons.**
- (21a) In order to facilitate the integration of renewable energy into the distribution and transmission grids, the screening or environmental impact assessment for grid reinforcements should be limited to the potential impacts stemming from the change to the grid infrastructure. Operators should be required to demonstrate on the basis of objective and verifiable criteria that the grid reinforcement is linked to the integration of renewable energy.**

- (22) ~~Renewable energy sources are crucial to fight climate change, reduce energy prices, decrease the Union's dependence on fossil fuels and ensure the Union's security of supply. For the purposes of the relevant Union environmental legislation, in the necessary case by case assessments to ascertain whether a plant for the production of energy from renewable sources, its connection to the grid, the related grid itself or storage assets is of overriding public interest in a particular case, Member States should presume these plants and their related infrastructure as being of overriding public interest and serving public health and safety, except where there is clear evidence that these projects have major adverse effects on the environment which cannot be mitigated or compensated. Considering such plants as being of overriding public interest and serving public health and safety would allow such projects to benefit from a simplified assessment.~~¹¹
- (23) In order to ensure a smooth and effective implementation of the provisions laid down in this Directive, the Commission supports Member States through the Technical Support Instrument¹² providing tailor-made technical expertise to design and implement reforms, including those increasing the use of energy from renewable sources, fostering better energy system integration, identifying specific areas particularly suitable for the installation of plants for the production of renewable energy, and streamlining the framework for authorisation and permit-granting processes for renewable energy plants. The technical support, for example, involves strengthening of administrative capacity, harmonising the legislative frameworks, and sharing of relevant best practices **such as enabling and favouring multiple uses.**

¹¹ **Delegations are informed that this Recital would is replaced by Recital 10b as agreed by the TTE Council as part of the General Approach on the Renewable Energy Directive.**

¹² Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument.

- (24) The Directive (EU) 2018/2001 should therefore be amended accordingly.
- (25) []
- (26) []¹³
- (27) ~~Energy efficiency is a key area of action, without which independence from fossil fuels and energy imports from Russia and the full decarbonisation of the Union's economy cannot be achieved. The need to capture the cost effective energy saving opportunities has led to the Union's current energy efficiency policy. In December 2018, a new 2030 Union headline energy efficiency target of at least 32,5% (compared to projected energy use in 2030) was included as part of the 'Clean Energy for All Europeans package'. To increase independence and resilience and to achieve the increased climate ambition, energy efficiency improvements should be further raised to at least 39% for final energy and 41.5% for primary energy, based on the 2007 Reference Scenario projections for 2030. []~~
- (28) ~~However, the change in the Eurostat energy balance calculation methodology and improvements in subsequent modelling projections call for a change of the baseline. Thus, using the same approach to define the target, that is to say comparing it to the future baseline projections, the ambition of the Union's 2030 energy efficiency target should be set compared to the 2020 Reference Scenario projections for 2030 reflecting national contributions from the NECPs. With that updated baseline, the Union will need to further increase its energy efficiency ambition by at least 13% in 2030 compared to the level of efforts under the 2020 Reference Scenario. This new way of expressing the level of ambition for the Union's targets does not affect the actual level of efforts needed. []~~

¹³ **Delegations are informed that recitals 25 and 26 are to be discussed in the context of the parallel ongoing negotiations related to the EPBD.**

- (29) ~~The Directive 2012/27/EU should therefore be amended accordingly. []~~¹⁴
- (30) Since the objective of this Directive, namely reducing greenhouse gas emissions, energy dependency and energy prices, cannot be sufficiently achieved by the Member States but can rather, by reasons, of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiary as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (31) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁵, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified, in particular following the judgment of the European Court of Justice in Case Commission vs Belgium¹⁶ (case C-543/17).

¹⁴ **Delegations are informed that recitals 27 to 29 are to be discussed in the context of the parallel ongoing negotiations related to the EED.**

¹⁵ OJ C 369, 17.12.2011, p. 14.

¹⁶ Judgment of the Court of Justice of 8 July 2019, Commission v Belgium, C-543/17, ECLI: EU: C:2019:573.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive (EU) 2018/2001

Directive (EU) 2018/2001 is amended as follows:

(1) In Article 2, the following points ~~is~~ **are** added:

(9a) 'renewables go-to area' means a specific location **or area**, whether on land or sea **or inland waters**, which has been designated by a Member State as particularly suitable for the installation of plants for the production of energy from renewable sources, ~~other than~~ **other than** biomass combustion **and hydropower** plants.

(9c) 'innovative renewable energy technology' means a renewable energy generation technology that improves in at least one way comparable state-of-the-art renewable energy technologies or makes exploitable a largely untapped renewable energy resource.

~~(2) in Article 3, paragraph 1 is replaced by the following:~~ **(2) in Article 3, paragraph 1 is replaced by the following:**

~~'1. Member States shall collectively ensure that the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 is at least [45]%.'¹⁷~~

'1. Member States shall collectively ensure that the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 is at least [X] 40 %.'

¹⁷ ~~**Delegations are informed that this provisions are replaced with Article 3(1) of the General Approach on the Renewable Energy Directive (ST 10488/ 2022).**~~

(3) In Article 15, the following paragraph 2a is inserted:

‘2a. Member States shall promote the testing of **innovative** ~~new~~–renewable energy technologies in pilot projects in a real-world environment, for a limited period of time, in accordance with the applicable EU legislation and accompanied by appropriate safeguards to ensure the secure operation of the electricity system and avoid disproportionate impacts on the functioning of the internal market, under the supervision of a competent authority.

(4) The following Article 15b is inserted:

‘Article 15b

Mapping of areas necessary for national contributions towards the 2030 RES target

(1) By ~~{1 1- 2 years~~ **18 months** after the entry into force], Member States shall, ~~taking into account the precautionary principle laid down in Article 191 of the TFEU,~~ identify the land, ~~and~~–sea **or inland water** areas necessary for the installation of plants for the production of energy from renewable sources that are required in order to meet **at least the share of** their national contributions towards the 2030 renewable energy target in accordance with Article 3 of this Directive ~~which is planned to be achieved on their national territory.~~ **Member States may build upon their existing spatial planning documents plans for this purpose.** Such areas, **including the existing plants, together with cooperation mechanisms,** shall be commensurate with the estimated trajectories and total planned installed capacity by renewable energy technology set in national energy and climate plans of Member States, as updated pursuant to Article 14 of Regulation (EU) 2018/1999. **Member States shall ensure coordination among all the relevant national, regional and local authorities and entities, including network operators, in the mapping of the necessary areas, where appropriate.**

- (2) When identifying the areas referred to in paragraph 1, Member States shall take into account **in particular**:
- (a) the availability of the renewable energy resources and the potential for renewable energy production of the different technologies in the land and sea areas;
 - (b) the projected energy demand;
 - (c) the availability of relevant grid infrastructure, storage and other flexibility tools or the potential to create **or further upgrade** such grid infrastructure and storage;
 - ~~(d) **the environmental sensitivity of the land and sea areas.**~~ **(d) the environmental sensitivity of the land and sea areas.**
- (3) Member States shall favour multiple uses of the areas identified as a result of the obligation in paragraph 1.’

Member States shall periodically review and update when necessary the identification of the areas referred to in paragraph 1, at least in the context of the update of the national energy and climate plans pursuant to Article 14 of Regulation (EU) 2018/1999.

- (5) The following Article 15c is inserted:

'Article 15c

Renewables go-to areas

- (1) By ~~{2-3 years}~~ **30 months** after the entry into force, Member States shall **ensure that the competent authorities adopt** ~~adopt~~ a plan or plans designating, **as a sub-set of** ~~within~~ the areas referred to in Article 15b(1), renewables go-to areas for one or more types of renewable energy sources ~~is adopted by designated competent authorities~~. **For that purpose, Member States may exclude biomass combustion and hydropower plants. Member States shall decide the size of such renewables go-to areas, in view of the specificities and requirements of the technology or technologies for which they set-up renewables go-to areas.**

In that plan or plans, Member States shall:

- (a) Designate sufficiently homogeneous land, **inland water** and sea areas where the deployment of a specific type or types of renewable energy is not expected to have significant environmental impacts, in view of the particularities of the selected territory. In doing so, Member States shall:
- exclude Natura 2000 sites and **areas designated under national protection schemes for nature and biodiversity conservation** ~~nature parks and reserves~~, the identified bird migratory routes as well as other ~~areas~~ **sites** identified based on sensitivity maps and the tools referred to in the next point, except for artificial and built surfaces located in those areas such as rooftops, parking areas or transport infrastructure.
 - use all appropriate tools and datasets to identify the areas where the renewable energy plants would not have a significant environmental impact, including wildlife sensitivity mapping.

(b) ~~Establish~~ **Adopt** appropriate rules for the designated renewable go-to areas, including on ~~the~~ **effective** mitigation measures to be adopted for the installation of renewable energy plants, co-located energy storage facilities, as well as assets necessary for their connection to the grid, in order to avoid or, if not possible, to significantly reduce the negative **impact on the** environmental ~~impacts~~ that may arise. ~~Where appropriate,~~ Member States shall ensure that appropriate mitigation measures are applied **in a proportionate and timely manner** to prevent the situations described in Articles 6(2) and 12(1) of Directive 92/43/EEC, Article 5 of Directive 2009/147/EEC and Article 4(1)(a)(i) and (ii) of Directive 2000/60/EC. Such rules shall be targeted to the specificities of each identified renewable go-to area, the renewable energy technology or technologies to be deployed in each area and the identified environmental impacts. Compliance with such rules and the implementation of the appropriate mitigation measures by the individual projects shall result in the presumption that projects are not in breach of those provisions without prejudice to paragraphs 4 and 5 of Article 16a. ~~Where novel~~ **Novel** mitigation measures to prevent as much as possible the killing or disturbance of species protected under Council Directive 92/43/EEC and Directive 2009/147/EEC, or **to avoid** any other **likely significant** environmental impact, ~~have not been~~ **shall be** widely tested **and closely monitored** as regards their effectiveness. Member States may allow their use for one or several pilot projects for a limited time period, ~~provided that the effectiveness of such measures is closely monitored and~~ **taking** appropriate steps ~~are taken~~ immediately if **such measures, despite their prior testing and monitoring,** ~~they~~ do not prove to be effective.

Member States shall explain in the plan the assessment made to identify each designated go-to area on the basis of the criteria set out in point (a) and to identify appropriate mitigation measures.

- (2) Before its adoption **or approval**, the plan or plans designating renewables go-to areas shall be subject to an environmental assessment carried out in accordance with the conditions set out in Directive 2001/42/EC, and where ~~applicable, if including artificial and built surfaces located in Natura 2000 sites~~, likely to have significant ~~impacts in those~~ **effect on Natura 2000** sites, to the appropriate assessment in accordance to Article 6(3) of Directive 92/43/EEC.
- (3) The plan or plans designating renewables go-to areas shall be made public and shall be reviewed periodically **as appropriate, in particular at least** in the context of the update of the national energy and climate plans pursuant to Article 14 of Regulation (EU) 2018/1999.’
- (4) Within 6 months from the entry into force of this amending Directive, Member States may declare as renewables go-to areas specific areas which have been already designated as areas suitable for an accelerated deployment of one or more renewable energy technologies, provided that the following conditions are met:**
- (a) such areas are outside Natura 2000 sites, areas designated under national protection schemes for nature and biodiversity conservation and identified bird migratory routes,**
- (b) the plans identifying such areas have been subject to strategic environmental assessment in accordance with the conditions set out in Directive 2001/42/EC and, where appropriate, to an assessment in accordance with Article 6(3) of the Habitats Directive; and**
- (c) the projects located in those areas implement appropriate and proportionate rules and measures to address the negative environmental impacts that may arise.**

In the permit granting process, the competent authorities shall apply the procedures and deadlines referred to in Article 16a to individual projects in those areas.

- (6) Article 16 is replaced by the following:

Article 16

Organisation and main principles of the permit-granting process

- (1) The permit-granting process shall cover all relevant administrative permits to build, repower and operate plants for the production of energy from renewable sources, co-located energy storage facilities, as well as assets necessary for their connection to the grid, including grid connection permits and environmental assessments where these are required. The permit-granting process shall comprise all ~~procedures~~ **administrative stages** from the acknowledgment of the ~~validity~~ **completeness** of the application in accordance with paragraph 2 to the notification of the final decision on the outcome of the procedure by the relevant authority or authorities.
- (2) No later than ~~[fourteen days]~~ **one month** **30 days** for plants located in go-to areas and ~~[one – two months]~~ **45 days** for plants located outside of go-to areas, following the receipt of the application, the competent authority shall **acknowledge the completeness of** ~~validate~~ the application or if the developer has not sent all the information required to process an application, request the developer to submit a complete application **without undue delay** within ~~[fourteen days]~~ from this request. ~~If the developer does not submit a complete application within this deadline, the competent authority may reject the application in written form. In the event of a rejection, the competent authority shall justify its decision. The developer may resubmit a new application at any point in time following such rejection.~~ The date of the acknowledgement of the ~~validity~~ **completeness** of the application by the competent authority shall serve as the start of the permit-granting process.

- (3) Member States shall set up or designate one or more contact points. Those contact points shall, upon request by the applicant, guide through and facilitate the entire administrative permit application and granting process. The applicant shall not be required to contact more than one contact point for the entire process. The contact point shall guide the applicant through the administrative permit application process, including the environmental related steps, in a transparent manner up to the delivery of one or several decisions by the responsible authorities at the end of the process, provide the applicant with all necessary information and involve, where appropriate, other administrative authorities. The contact point shall ensure fulfilment of the deadlines for the permit-granting procedures set out in this Directive. Applicants shall be allowed to submit relevant documents in digital form. By {2 years from entry into force} Member States shall ensure that all procedures are carried out in electronic format.
- (4) The contact point shall make available a manual of procedures for developers of renewable energy production plants and shall provide that information also online, addressing distinctly also small-scale projects, **renewable energy communities, collective and individual** ~~and~~ renewables self-consumers projects. The online information shall indicate the contact point relevant to the applicant's application. If a Member State has more than one contact point, the online information shall indicate the contact point relevant to the applicant's application.
- (5) Member States shall ensure, **in the context of the existing national rules, where applicable,** that applicants **and general public** have easy access to simple procedures for the settlement of disputes concerning the permit-granting process and the issuance of permits to build and operate renewable energy plants, including, where applicable, alternative dispute resolution mechanisms.

- (6) The deadlines laid down in Articles 16a, 16b and 16c shall apply without prejudice to judicial appeals, remedies and other proceedings before a court or tribunal, and to alternative dispute resolution mechanisms, including complaints procedures, non-judicial appeals and remedies, and may be extended for the duration of such procedures.
- (7) Member States shall ensure that administrative and judicial appeals in the context of a project for the development of renewable energy production plant or its related grid connection, including those related to environmental aspects shall be subject to the most expeditious administrative and judicial procedure that is available at the relevant national, regional and local level.’
- (7a) Except when it coincides with other administrative stages of the permit-granting process, the duration of the permit-granting process shall not include:**
- (a) the time during which the plants, their grid connections and, with a view of ensuring grid stability, grid reliability and grid safety, the related necessary grid infrastructure are being built or repowered,**
- (b) the time for the administrative stages necessary for significant upgrades of the grid required to ensuring grid stability, grid reliability and grid safety.**

- (7) The following Article 16a is inserted:

Article 16a

Permit-granting process in renewables go-to areas

- (1) Member States shall ensure that the permit-granting process referred to in Article 16(1) shall not exceed {one year} for projects in renewables go-to areas, **and shall not exceed two years for offshore renewable projects**. Where duly justified on the ground of extraordinary circumstances, that {one-year} period may be extended by up to ~~{three--six months}~~. In such a case, Member States shall clearly inform the developer about the extraordinary circumstances that justified the extension.
- (2) The permit-granting process for the repowering of plants and for new installations with an electrical capacity of less than 150 kW, co-located energy storage facilities as well as their grid connection, located in renewables go-to areas shall not exceed ~~{six nine six months}~~, **and shall not exceed 1 year for offshore wind energy projects**. Where duly justified on the ground of extraordinary circumstances, such as on grounds of overriding safety reasons where the repowering project impacts substantially on the grid or the original capacity, size or performance of the installation, that ~~{six nine six months one year}~~ period may be extended by up to {three ~~-six~~} months. Member States shall clearly inform the project developer about the extraordinary circumstances that justify the extension. **For offshore wind energy projects, the deadlines established under paragraph 1 shall apply.**

- (3) Without prejudice to paragraphs 4 and 5, by derogation from Article 4(2) of Directive 2011/92/EU, and Annex II, points 3(a), (b), (d), (h), (i), and 6(c) alone or in conjunction with point 13(a) to that Directive as far as this concerns renewable energy projects, new applications for renewable energy plants, ~~except for biomass combustion plants~~, including the repowering of plants, in already designated renewables go-to areas for the respective technology, co-located storage facilities as well as their connection to the grid, shall be exempted from the requirement to carry out a dedicated environmental impact assessment under Article 2(1) of Directive 2011/92/EU, provided that these projects comply with the rules and measures set out in accordance with Article 15c(1), point (b). The exemption from the application of Directive 2011/92/EU above shall not apply to projects which are likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, as provided for in Article 7 of the said Directive.

By derogation from Article 6(3) of Directive 92/43/EEC, the plants referred to in the first subparagraph, shall not be subject to an assessment of their implications for Natura 2000 sites **provided that these projects comply with the rules and measures set out in accordance with Article 15c(1), point (b). if the absence of significant effects of the plants was proved on the basis of the appropriate assessment of the plans designating renewables go-to areas carried out in accordance with Directive 92/43/EEC.**

- (4) The competent authorities of Member States shall carry out a screening of the applications referred to in paragraph 3. Such screening shall aim to identify if any of such projects is ~~highly~~ ~~highly~~ likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographical areas where they are located, that were not identified during the environmental assessment of the plan or plans designating renewables go-to areas carried out in accordance with Directive 2001/42/EC and, if relevant, with Directive 92/43/EEC. **Such screening shall also aim to identify if any of such projects is subject to transboundary assessment according to Article 7 of the Directive 2011/92/EU due to its likelihood of significant effects on the environment in another Member State or due to request of Member State which is likely to be significantly affected.** The screening carried out for the repowering of projects shall be limited to the potential impacts stemming from the change or extension compared to the original project.

For the purpose of such screening, the project developer shall provide information on the characteristics of the project, on its compliance with the rules and measures identified according to Article 15c (1), points (b) and (c), for the specific go-to area, on any additional measures adopted by the project and how these measures address environmental impacts. The competent authority may request the applicant to provide additional information. Such screening shall be finalised within ~~{30 – 60}~~ **45** days] from the date of submission of the ~~complete~~ applications **with sufficient information necessary for this purpose on the characteristics of the project and its likely significant adverse effects on the environment** for new renewable energy plants, with the exception of applications for installations with an electrical capacity of less than 150 kW. For such installations and for new applications for the repowering of plants, the screening phase shall be finalized within ~~{15 – 30}~~ days].

- (5) Following the screening process, the applications referred to in paragraph 3 shall be authorised from an environmental perspective without requiring any express **screening** decision from the competent authority, unless the competent authority adopts an administrative decision, duly motivated and based on clear evidence, that a specific project is **highly** highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographic area where they are located that cannot be mitigated by the measures identified in the plan or plans designating go-to areas or proposed by the developer for the project. Such decision shall be made available to the public. Such projects shall be subject to an assessment in accordance with Directive 2011/92/EC and, if applicable, to an assessment under Article 6(3) of Directive 92/43/EEC, ~~which shall be carried out within [six months] following the screening decision~~ **which shall be carried out within six months following the submission of complete documentation including information necessary for such assessment. Where duly justified on the ground of extraordinary circumstances that {six months} period may be extended by up to {six months}**
- (6) In the permit-granting process of the applications referred to in paragraphs 1 and 2, **Member States may provide that** the lack of reply of the relevant administrative bodies within the established deadline ~~shall~~ results in the specific administrative steps to be considered as approved **provided that there is an explicit final decision on the outcome of the process.** ~~except in those cases where the specific project is subject to an environmental impact assessment in accordance with paragraph 5. All resulting decisions shall be made~~ will be publicly available.

- (8) The following Article 16b is inserted:

Article 16b

Permit-granting process outside renewables go-to areas

- (1) Member States shall ensure that the permit-granting process referred to in Article 16(1) shall not exceed two years, for projects outside renewables go-to areas, **and shall not exceed three years for offshore renewable projects**. Where duly justified on the grounds of extraordinary circumstances **or extended periods needed for assessments under applicable Union environmental law**, that two-year period may be extended by up to ~~three~~ **twelve** ~~six~~ months]. In such a case, Member States shall clearly inform the developer about the extraordinary circumstances that justified the extension.
- (2) Where an environmental assessment is required under Directive 2011/92/EU or Directive 92/43/EEC, it shall be carried out in a single procedure that combines all relevant assessments for a given project. When any such environmental impact assessment is required, the competent authority, taking into account the information provided by the developer, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report, of which the scope shall not be extended subsequently. Where the specific projects have adopted appropriate mitigation measures, any-killing or disturbance of the species protected under Article 12(1) of Directive 92/43/EEC and Article 5 of Directive 2009/147/EC shall not be considered deliberate. ~~Where novel~~ **Novel** mitigation measures to prevent as much as possible the killing or disturbance of species protected under Council Directive 92/43/EEC and Directive 2009/147/EEC, or **to avoid** any other **likely significant** environmental impact, ~~have not been~~ **shall be** widely tested **and closely monitored** as regards their effectiveness. Member States may allow their use for one or several pilot projects for a limited time period, ~~provided that the effectiveness of such measures is closely monitored and~~ **taking** appropriate steps are taken immediately if they **such measures, despite their prior testing and monitoring**, do not prove to be effective. The permit-granting process for the repowering of projects and for new installations with an electrical capacity of less than 150 kW, co-located storage facilities as well as their grid connection, located outside renewables go-to areas shall not exceed one year including environmental assessments where required by relevant legislation, **and shall not exceed two years for offshore wind**

projects. Where duly justified on the ground of extraordinary circumstances, this one-year period may be extended by up to three months. Member States shall clearly inform the developers about the extraordinary circumstances that justified the extension.

Member States shall facilitate the repowering of projects located outside go-to areas by ensuring that, if an environmental assessment for a project is required under the Union environmental legislation, such assessment shall be limited to the potential impacts stemming from the change or extension compared to the original project. ’

- (9) The following Article 16c is inserted:

‘Article 16c

Accelerated deployment and pPermit-granting process for the installation of solar energy equipment in artificial structures

- (1) Member States shall ensure that the permit-granting process referred to in Article 16(1) for the installation of solar energy equipment, including building-integrated solar installations, in existing or future artificial structures, with the exclusion of artificial water surfaces, shall not exceed three months, provided that the primary aim of such structures is not solar energy production. By derogation from Article 4(2) of Directive 2011/92/EU and Annex II, points 3(a) and (b), alone or in conjunction with point 13(a) to that Directive, such installation of solar equipment shall be exempted from the requirement, if applicable, to carry out a dedicated environmental impact assessment under Article 2(1) of Directive 2011/92/EU. **Member States may exclude certain areas or structures from the provisions of paragraph 1, due to reasons of cultural or historical heritage protection, or for reasons related to national defence interests or safety reasons.**

Article 16d

- (1) Where the integration of renewables into the electricity system requires the reinforcement of the grid infrastructure and such reinforcement is subject to the screening procedure pursuant to Article 16a paragraph 4, or to an environmental impact assessment in the circumstances referred to in Article 16a paragraph 6, or to an environmental impact assessment pursuant to Article 4 of Directive 2011/92/EU, such screening and/or environmental assessment shall be limited to the potential impacts stemming from the change or extension compared to the original grid infrastructure.**
- (2) Where the integration of renewables into the electricity system requires the reinforcement of the grid infrastructure and such reinforcement is subject to an environmental impact assessment pursuant to Article 4 of Directive 2011/92/EU, such environmental assessment shall be limited to the potential impacts stemming from the change or extension compared to the original grid infrastructure.**

(10) — ~~The following Article 16d is inserted:~~

Article 16d

Overriding public interest

By [three months from entry into force], until climate neutrality is achieved, Member States shall ensure that, in the permit granting process, the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself and storage assets are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of Articles 6(4) and 16(1)(e) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.¹⁸

Article 2

[]¹⁹

¹⁸ **Delegations are informed that this article, if retained, would be replaced by Articles 15(8)b, 15(8)c and 15(8)d as agreed by the TTE Council as part of the General Approach on the Renewable Energy Directive. (ST 10488/ 2022).**

¹⁹ **Delegations are informed that Article 2 amending Directive 2010/31/EU and proposing a new Article 9a titled "Solar energy in buildings" is to be discussed in the context of the parallel ongoing negotiations on the EPBD.**

~~Article 3~~

[]²⁰

~~Amendment to Directive 2012/27/EU~~

Directive 2012/27/EU is amended as follows:-

(1) ~~in Article 3, paragraph 5 is replaced by the following:-~~

~~‘5. Member States shall collectively ensure a reduction of energy consumption of at least 13 % in 2030 compared to the projections of the 2020 Reference Scenario so that the Union’s final energy consumption amounts to no more than 750 Mtoe and the Union’s primary energy consumption amounts to no more than 980 Mtoe in 2030.’~~

Article 4

Transposition

(1) ~~Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1, point (10) D, by [three months after the entry into force of this Directive] at the latest²¹.~~

²⁰ **Delegations are informed that Article 3 amending Directive 2012/27/EU is to be discussed in the context of the parallel ongoing negotiations on the EED.**

²¹ **Delegations are informed that this paragraph is replaced by the provisions contained in the General Approach on REDII.**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1, points (1), (2), (3), (4), (6), (8) and (9), ~~and Article 3~~ by ~~one year~~ after the entry into force of this Directive at the latest.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1, points (5) and (7), ~~and Article 2²²~~ by ~~two years~~ after the entry into force of this Directive at the latest.

They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- (2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

²²

Delegations are informed that this specific provision pertaining to the EBPD is to be discussed in the context of the parallel ongoing negotiations related to this specific file.

Article 6
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
