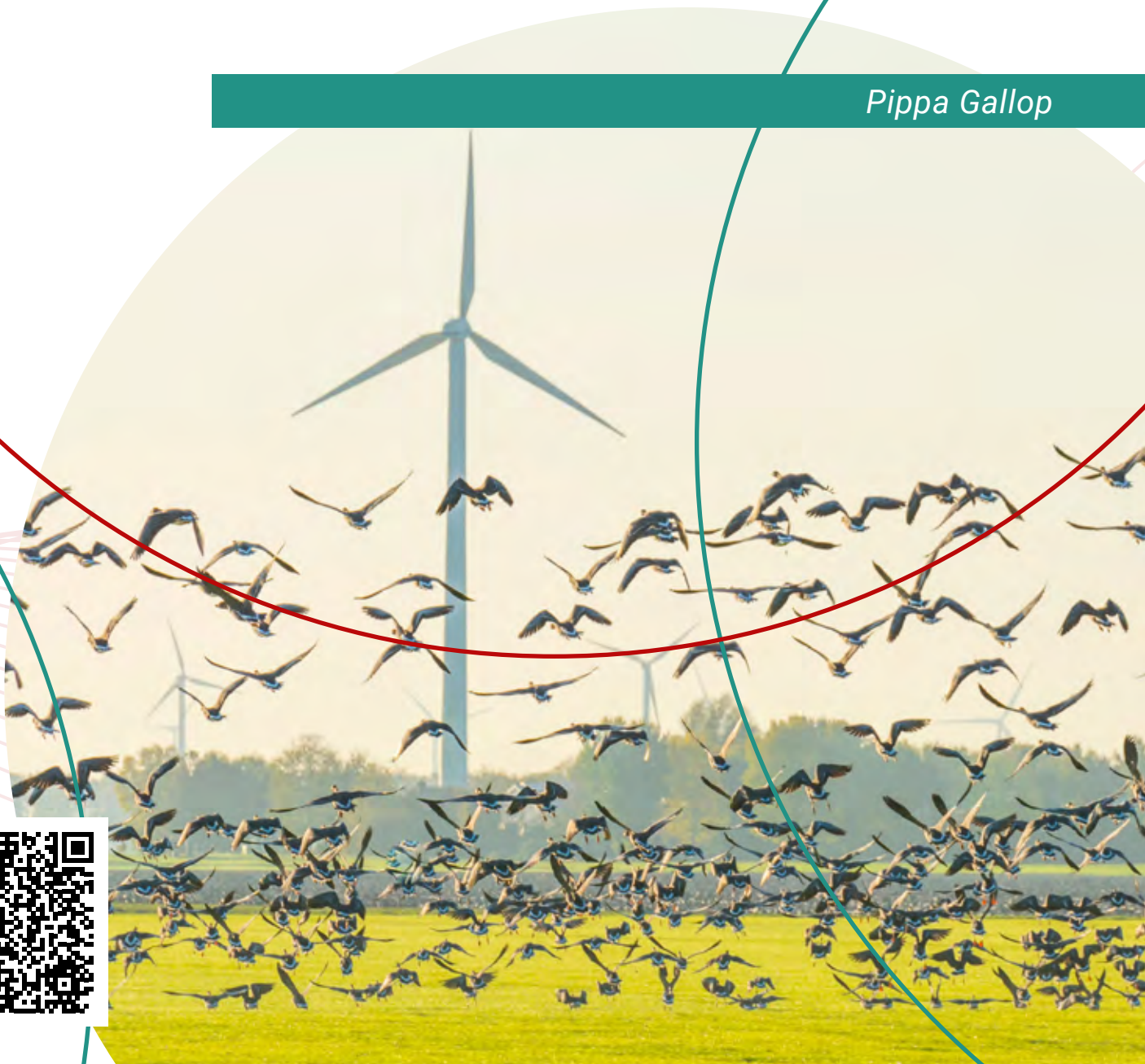


TOWARDS A RENEWABLES SCALE-UP THAT WORKS FOR NATURE

Pippa Gallop



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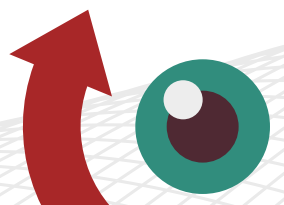
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RECOVERY WATCH



RECOVERY WATCH

WHAT IS THIS PROJECT ABOUT?

The National Recovery and Resilience Plans represent the new framework in which European member states identify their development strategies and allocate European and national resources – with the objective of relaunching socio-economic conditions following the coronavirus pandemic.

This process, initiated as part of the European response to the global health crisis, follows the construction of NextGenerationEU. It combines national and European efforts to relaunch and reshape the economy, steering the digital and climate transitions.

For European progressives, it is worth assessing the potential of these national plans for curbing inequalities and delivering wellbeing for all, as well as investigating how to create a European economic governance that supports social, regional, digital and climate justice.

The Foundation for European Progressive Studies (FEPS), the Friedrich Ebert Stiftung (FES) and the Institut Emile Vandervelde (IEV), in partnership with first-rate knowledge organisations, have built a structured network of experts to monitor the implementation of National Recovery and Resilience Plans and assess their impact on key social outcomes. Fact- and data-based evidence will sharpen the implementation of national plans and instruct progressive policymaking from the local to the European level.

The Recovery Watch will deliver over 15 policy studies dedicated to cross-country analysis of the National Recovery and Resilience Plans and NextGenerationEU. Monitoring the distributive effects of EU spending via NextGenerationEU, and the strategies and policies composing the national plans, the project will focus on four areas: climate action, digital investment, welfare measures and EU governance.



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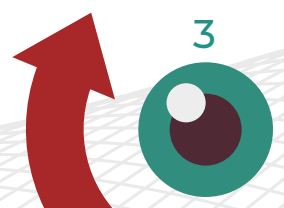


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GLOSSARY

Birds Directive	Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds
EIA	environmental impact assessment, a process carried out before development consent can be issued for certain projects that may have significant environmental impacts, which in the EU also includes a mandatory public consultation
EIA Directive	Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014
Habitats Directive	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
Natura 2000	stretching over 18% of the EU's land area and more than 8% of its marine territory, Natura 2000 is the largest coordinated network of protected areas in the world. It offers a haven to Europe's most valuable and threatened species and habitats and is governed by the Habitats and Birds Directives
NRRP	National Recovery and Resilience Plan – Plans submitted by the EU member states in order to access funds
Recovery and Resilience Facility (RRF)	a temporary funding instrument, consisting of grants and loans, that is the centrepiece of NextGenerationEU, the EU's plan to emerge stronger and more resilient from the COVID-19-induced economic crisis
REPowerEU	a package of policy measures to save energy, scale-up renewable energy and diversify fossil fuel import sources launched by the European Commission in May 2022 in response to Russia's full-scale invasion of Ukraine
SEA	strategic environmental assessment, a procedure that must be undertaken when assessing a plan or programme which may have significant impacts on the environment. Amongst others, it includes the preparation of an SEA study and public consultation, to minimise negative impacts and maximise benefits at an early stage
SEA Directive	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
WFD	Water Framework Directive – 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.

EXECUTIVE SUMMARY

Biodiversity in the EU is in a parlous state, with **81% of EU habitats in a poor or bad condition**, and global heating records are constantly being broken. Yet, **humans cannot live without either a stable climate or biodiversity**. Both are needed to ensure a food supply, drinking water, medicines, clean air and temperature regulation, so a trade-off between one and the other makes no sense, particularly at this stage of the global climate emergency.

This policy study, produced as part of FEPS' Recovery Watch series, therefore, examines recent changes in EU renewable energy rules, aimed at a much-needed acceleration in renewable energy deployment. The principal idea behind these new rules is sound: by better mapping environmentally sensitive locations and establishing "acceleration areas" in places where impacts are expected to be low, the **development of renewable energy and biodiversity protection can go hand in hand** and potential conflicts can be avoided at an early stage.

However, the **inclusion of derogations from the EU's long-established and nuanced environmental legislation brings high risks**, both in terms of pushing forward specific biodiversity-damaging projects and as a possible precedent for other sectors.

This study argues that the legal changes made are not all justified by the publicly available evidence on what is needed to remove the most pertinent barriers. Rather, they are based on an unproven assumption that EU biodiversity protection legislation is a problem to be circumvented, rather than a safeguard for the very foundation of life on earth.

The study shows **how selected central and eastern EU member states plan to use recovery funds to speed up renewable energy** in this emerging context. Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia together make up roughly 20% of the EU population and 17% of the electricity demand, but still account for just 7% and 12% of EU wind and solar capacity, respectively.¹ Most of the countries are finally trying to unblock the development of renewable energy, but their proposals – including in their recovery plans – are vague, and some are likely to be highly damaging to biodiversity, particularly in the emerging legal context.

Case studies from Romania, Slovenia, Estonia and Latvia form a springboard for discussing whether a trade-off between climate and biodiversity is

necessary to speed up renewable energy development as part of the EU's recovery and what alternative policy options exist.

The study argues that the **biodiversity and climate emergencies have to be tackled together and that trade-offs between renewable energy and biodiversity can and must be reduced to an absolute minimum**. It demonstrates that, even if better implementation of EU environmental and public participation legislation is sometimes needed at the national level, these are already flexible enough to achieve a balance and allow the appropriate development of renewable energy.

Indeed, it argues that **eroding environmental and public participation provisions are likely to cause a backlash and feed populist narratives**, so it is likely to prove counterproductive in terms of speeding up renewables development. Finally, the study argues that **a range of policy options exist to speed up renewables without derogating from EU environmental or public participation provisions**, including taking a phased approach and ramping up low-impact renewables in built-up areas and on existing infrastructure, while building a wider consensus on which locations and technologies should be used in the coming years.

1. INTRODUCTION

1.1 FROM EUROPEAN GREEN DEAL TO "GREEN RECOVERY" AND REPOWEREU

The EU has, for many decades, sought to decrease the environmental impact of its activities by means of wide-ranging, yet flexible, legislation designed to balance the need for economic activities with the need to preserve and improve the quality of the environment. Its legislation initially concentrated on nature conservation, decreasing pollution and protecting health.

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The need for the EU to decrease its greenhouse gas emissions and increase its share of renewable energy by means of binding targets has become an increasingly high priority.

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Along with these aspects, during the last two decades, the need for the EU to decrease its greenhouse gas emissions and increase its share of renewable energy by means of binding targets has become an increasingly high priority. This requires a massive transformation of our economies, not only in the power sector – where most progress has been visible so far – but also in the industrial, heating and transport sectors, where a strong increase in electrification is expected, thus requiring even more renewable electricity generation.

Under the Paris Agreement, the EU adopted additional commitments to take action against climate change.² In 2018, the EU agreed to a binding target of at least 32% renewable energy in total final energy consumption under the recast Renewable Energy Directive,³ but the European Commission's European Green Deal,⁴ published in December 2019, made it clear that higher targets were needed.

The Green Deal, amongst others, emphasises supplying clean, affordable and secure energy, as well as preserving and restoring ecosystems and biodiversity. The EU's biodiversity strategy for 2030 also states that

Investing in nature protection and restoration will also be critical for Europe's economic recovery from the COVID-19 crisis. [...] The European Green Deal – the EU's growth strategy – will be the compass for our recovery, ensuring that the economy serves people and society and gives back to nature more than it takes away.⁵

The need to tackle the climate and biodiversity crises together – and to avoid trade-offs – is a key tenet of the European Green Deal, which forms a strong basis for coherent policy actions. The EU needs to uphold its primary duty to people, human health and nature at the same time as tackling climate change, as these are inseparable.

Humans cannot live without either a stable climate or biodiversity. Both are needed to ensure a food supply, drinking water, medicines, clean air and temperature regulation, so a trade-off between one or the other makes no sense, particularly at this stage of the global climate emergency.

Climate chaos is already impacting biodiversity, amongst others, through wildfires, floods and droughts, but also by enabling the spread of pests, diseases and invasive species.⁶ But biodiversity protection and restoration is also essential to limit climate change. Around half of greenhouse gases produced are absorbed by the land and ocean.⁷ Although forests offer the largest potential overall, peatlands currently store twice as much carbon, despite only covering 3% of land globally.⁸ Ocean habitats, such as seagrasses, can also sequester carbon dioxide from the atmosphere at rates up to four times higher than terrestrial forests can.⁹ Recent findings also demonstrate the role of wild animals in enhancing natural carbon sequestration and call for their restoration and conservation as a key component of natural climate solutions.¹⁰

In the EU, trade-offs between biodiversity and climate, regarding renewable energy, should also be largely unnecessary, even if conflicts will continue to arise in specific locations. A 2019 study found that using 3% of land for solar farms and – depending on offshore deployment – up to 15% of land for wind energy would be enough to cover the total EU energy demand exclusively from renewable sources.¹¹

However, the Green Deal's goal of tackling the biodiversity and climate crises together has been challenged in practice by two parallel processes: the use of funds aimed at recovery from the COVID-19 pandemic for biodiversity has been woefully insufficient, while a strong ongoing increase in renewable energy deployment in the EU has been accompanied by environmental deregulation that threatens to further degrade biodiversity. It is this complexity of ensuring both a crucially needed rapid renewables ramp-up and sufficiently protecting biodiversity as part of the EU's recovery that has given rise to this policy study, as part of FEPS' Recovery Watch project.

In February 2021, a massive new financing tool entered into force as a response to the financial crisis caused by the COVID-19 pandemic: the Recovery and Resilience Facility (RRF),¹² worth no less than €672.5 billion.¹³ 37% of the recovery fund had to be allocated for the green transition, providing vast potential to fast track the transformation of the EU's economy to renewable energy, as well as to boost nature protection and restoration.

However, no sub-target was set specifically for biodiversity. Partly as a result of this, member states' recovery plans allocated less than 1% of funds to biodiversity conservation and restoration.¹⁴

This is hugely problematic, as the cost of inaction on addressing biodiversity loss and nature degradation vastly outweighs the investments needed for its restoration. 81% of EU habitats are in poor or bad conservation status.¹⁵ The impacts on human health, agriculture and climate change adaptation will be enormous, and the overall ratio of the benefits of protecting nature globally compared to the cost of inaction is estimated to be at least 100 to 1.¹⁶

Moreover, the benefits of restoring the EU's peatlands, marshlands, forests, heathland and scrub, grasslands, rivers, lakes and alluvial habitats, and coastal wetlands are estimated to be 12 times greater than the costs.¹⁷ These include climate and water regulation, the provision of food, medicines and materials, carbon sequestration and storage, soil stabilisation and the purification of air and water, as well as direct economic benefits such as providing employment.¹⁸

In parallel with the recovery process, the Commission proposed to speed up climate action as part of the European Green Deal, through its "Fit for 55" package.¹⁹ This laid out the elements needed to fulfil the EU's greenhouse gas emissions reduction target of 55% by 2030

compared to 1990 levels, which had been set by the EU Climate Law.²⁰ As a result of this package, the EU has agreed to raise its renewable energy target to 42.5% by 2030, with an additional 2.5% indicative top up to reach 45%, and to tighten its energy-efficiency target to ensure a reduction of final energy consumption of at least 11.7% in 2030, compared with the energy consumption forecasts for 2030 made in 2020.²¹

This process was given new urgency by the gas crisis, which started in late 2021, and Russia's full-scale invasion of Ukraine. The scale-up of renewable energy – as well as energy-efficiency measures – clearly needed to speed up in the EU not only to tackle climate change, but also to decrease import dependence.

This entails new challenges for nature protection in the EU, as member states push forward renewable energy to a much larger extent and more quickly than previously. This would, under any circumstances, give rise to debates about specific projects, but the situation has been exacerbated by a wave of environmental deregulation at the EU level.

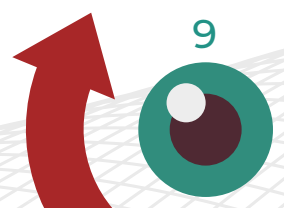
In May 2022, the European Commission put forward its REPowerEU package,²² which, amongst other measures aimed at further speeding up renewable energy, included controversial changes to the Renewable Energy Directive, as explored in more detail below.

REPowerEU also allowed member states to include additional chapters in their National Recovery and Resilience Plans (NRRPs), to access funds for critical reforms and investments to rapidly phase out the EU's dependence on Russian fossil fuels and foster zero-carbon sources and energy resilience. Overall, around €250 billion in REPowerEU funds are available for member states (Figure 1).²³

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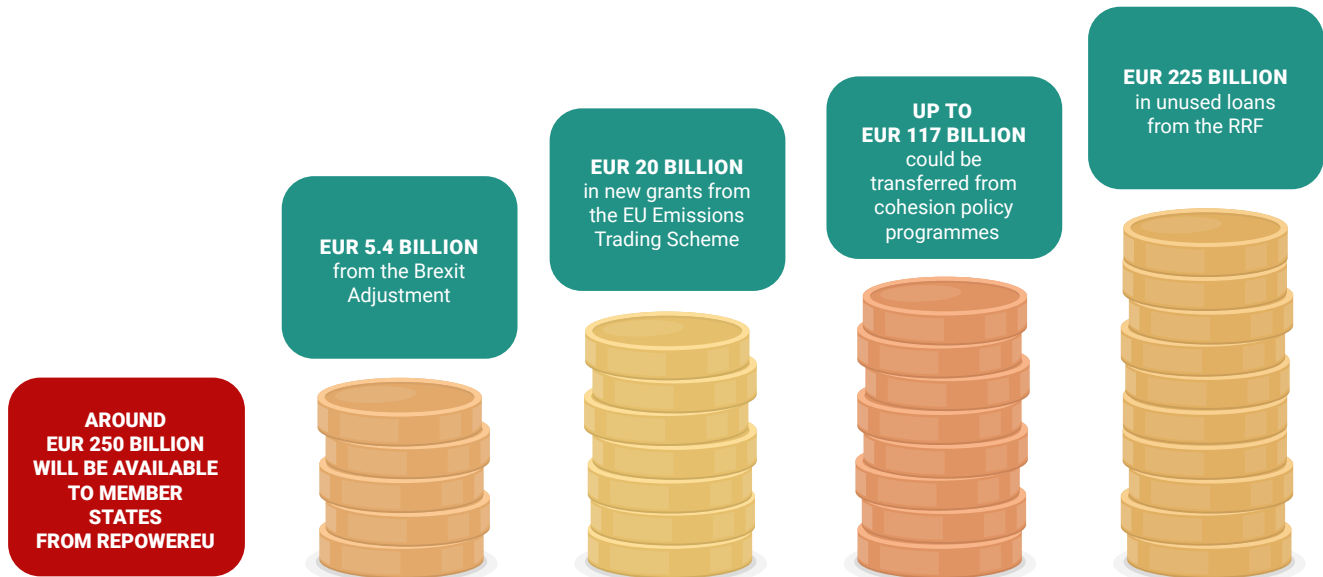
The scale-up of renewable energy clearly needed to speed up in the EU not only to tackle climate, but also to decrease import dependence.

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1. INTRODUCTION

FIGURE 1. Breakdown of funds available to finance energy transformation under REPowerEU.



Source: CEE Bankwatch Network, *REPowerEU – a new opportunity to finance energy transformation*, March 2023.

As a result, as of mid-2023, member states are in the process of making new investment decisions that again entail both opportunities and threats for the EU's climate and biodiversity policies.

In parallel, using a fast-track procedure that bypasses the European Parliament,²⁴ on 22 December 2022, the Council adopted Council Regulation (EU) 2022/2577 to speed up renewables permits.²⁵ The Regulation includes useful provisions to speed up small-scale solar and heat pump deployment, but these are undermined by clauses that conflict with EU environmental legislation and circumvent public consultation requirements.

At the end of March 2022, the European Parliament, Council and Commission also agreed on amendments, which contain similar provisions, to the Renewable Energy Directive.²⁶

The principal idea behind the update to the Renewable Energy Directive is sound: by better mapping environmentally sensitive locations and establishing renewables "acceleration areas" in places where impacts are expected to be low, the development of renewable energy and biodiversity protection can go

hand in hand, and potential conflicts can be avoided at an early stage. However, the inclusion of derogations from the EU's long-established and nuanced environmental legislation brings high risks, both in terms of pushing forward specific biodiversity-damaging projects and as a possible precedent for other sectors.

This policy study, therefore, aims to provide a more detailed look at the recent EU moves to facilitate renewable energy acceleration, arguing that the legal changes made are not all justified by the publicly available evidence on what is needed to remove the most pertinent barriers. Rather, they are based on a largely unproven assumption that EU biodiversity protection legislation is a problem to be circumvented, rather than a safeguard for the very foundation of life on earth.

The study then goes on to show how selected central and eastern EU member states plan to use recovery funds to speed up renewable energy in this emerging context. Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia together make up roughly 20% of the EU population and 17% of the electricity demand, but still account for just 7% and 12% of EU wind and solar capacity, respectively.²⁷

Most of the countries are finally trying to unblock the development of renewable energy, but their proposals – including in their recovery plans – are often vaguely defined, and some are likely to be highly damaging to biodiversity. The fact that certain measures are proposed in their recovery plans does not mean they are automatically accepted by the EU institutions for funding, but the EU's new renewables legislation causes confusion about what is allowed or not.

The case studies form a springboard for discussing the following questions:

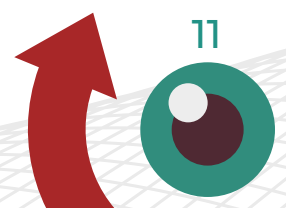
- Is a trade-off between climate and biodiversity necessary to speed up renewable energy development as part of the EU's recovery?
- What are the alternative policy options and have they been properly assessed?
- How could alternative policy and project options be prioritised?
- Is it ever justified to presume that investments in an entire sector are of overriding public interest?
- In those cases where a trade-off is necessary, how should this be assessed?

The policy study argues that the biodiversity and climate emergencies have to be tackled together and that trade-offs between renewable energy and biodiversity can and must be reduced to an absolute minimum. It demonstrates that, even if better implementation of EU environmental and public participation legislation is sometimes needed at the national level, these are already flexible enough to achieve a balance and allow the appropriate development of renewable energy. Indeed, it argues that eroding environmental and public participation provisions is likely to cause a backlash and may prove counterproductive in terms of speeding up renewables development. Finally, the study argues that a range of policy options exist to speed up renewables without derogating from EU environmental or public participation provisions and provides recommendations on how to speed up renewable energy development in a less damaging manner.

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Eroding environmental and public participation provisions is likely to cause a backlash and may prove counterproductive in terms of speeding up renewables development.

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2. BACKGROUND: THE NEED TO SPEED UP EU RENEWABLE ENERGY DEPLOYMENT

In many EU countries, renewable energy permits take too long, incentive schemes are inconsistent or politically motivated barriers prevent development, particularly in the wind sector.

Perhaps the best-known example is Poland, which from 2016 until March 2023²⁸ had a rule known as 10H, meaning that building wind farms within a distance of ten times the height of a turbine from residential buildings was prohibited. In practice, this meant that turbines would have to be built 1.5-2 kilometres (km) away from the nearest house, which left only 0.28% of the country's territory available.²⁹ But Poland is not the only country where – despite meeting its 2020 targets – renewables development is lagging in absolute terms.

2.1 STUDIES ON REMOVING BARRIERS

In recent years, several reports have examined barriers to renewable energy development. Two, both published in 2022, are of particular note, as they cover the whole EU. The first, known as the interim *RES simplify* study,³⁰ concentrates on permission processes, while the second – *Barriers and best practices for wind and solar electricity in the EU27 and UK*³¹ – is wider and looks at five different categories of barriers, including administrative, political and economic, market structure, grids, and others. These are important because they provide a basis to understand what measures are needed to speed up renewables and what can be done without major damage to biodiversity.

The interim *RES simplify* report summarises several main areas for improvement in permission processes, including clearer administrative communication, roles and processes; publication of guidelines, best practice and environmental and spatial data; a monitoring mechanism on barriers; public participation and acceptance measures, eased procedures for repowering of existing plants, self-supply and small-scale plants; political backing for renewables in local and regional planning; defining renewables as a public interest and ensuring that the authorities are fit for purpose.³²

The report was written by industry representatives and consultants, so it represents the interests only of a limited group of stakeholders. Still, it provides a wide range of measures to be taken, and – importantly – recognises the need for improved public engagement.

The *Barriers and best practices* report found that barriers related to administrative processes – high complexity, long duration and low transparency – were the biggest roadblocks to developments in the EU and affected most countries. For example, in Estonia, administrative procedures were extremely long – mainly caused by a lack of administrative staff. Spatial and environmental planning barriers were amongst the most severe in some countries – in Hungary, Ireland and Poland, they made wind energy development nearly impossible.

Political and economic barriers, such as problems with incentive schemes, were assessed to be less dominant than in the past, but remained serious in Hungary, Romania, Lithuania and Italy. Market barriers, such as access to finance and legal restrictions on power purchase agreements, were considered less serious, but still problematic in Italy, Czechia, Germany, Finland, Spain, Poland, Hungary and France. Grid connection costs or the transparency of the procedure was also considered a major issue in Hungary, Greece, Bulgaria, Austria or Belgium.

The report's main recommendations included a reliable, long-term renewables strategy, with binding national 2030 renewable energy targets; reliable and predictable support schemes; streamlined and transparent administrative procedures with clear deadlines, an adequate number of skilled personnel and state-of-the-art digital infrastructure; more centralised, one-stop-shop planning; upfront public participation and a comprehensive and inclusive strategic approach on future energy infrastructure, including grid planning and connection procedures.

While both of these studies show a clear need to speed up and clarify administrative procedures, neither of them suggest circumventing EU environmental legislation, and both of them acknowledge the need to strengthen – not weaken – public participation.

2.2 2018 RENEWABLE ENERGY DIRECTIVE BRINGS IMPROVEMENTS

In parallel with the development of these studies on barriers, Article 16 of the 2018 Renewable Energy Directive³³ introduced several new requirements on permit granting for renewable energy projects. These had to be transposed into national law by the end of June 2021, so their impacts are only gradually becoming visible, as only projects that enter the permitting procedure after transposition will be subject to these deadlines.

Member states are now obliged to set up so-called "one-stop shops" – contact points that can guide applicants through the entire administrative permitting process. Applicants also have to be allowed to submit relevant documents in digital form.

The updated directive also introduced a requirement to ensure that the permit-granting process for renewable energy plants did not last for more than two years, except in extraordinary circumstances, when the two-year period might be extended by up to one year.³⁴ These deadlines relate to actions by permit-granting authorities and do not include any legal challenges that may occur.

It would therefore have been appropriate to take stock of the impact of these changes on renewables acceleration before proposing additional, more controversial measures.

In early 2023, the European Commission took three member states to court for not having properly transposed the whole directive,³⁵ but, overall, cumulated increased efforts to speed up renewables deployment have started to show significant results.

In fact, they did so even before REPowerEU or the recovery funds had the chance to make an impact. During 2022, solar photovoltaic deployment in the EU increased by 47% compared to the previous year. The EU installed 41.4 gigawatts (GW) of solar in 2022, compared to the 28.1 GW installed in 2021.³⁶

According to SolarPower Europe, 41.4 GW represents enough capacity to power the equivalent of 12.4 million European homes. It also represents the equivalent of 4.45 billion cubic metres of gas or 102 liquid natural gas (LNG) tankers.³⁷

In addition, despite supply-chain difficulties, EU countries installed 15 GW of wind power in 2022, up no less than a third compared to 2021.³⁸

These achievements were certainly influenced by the gas crisis and Russia's full-scale invasion of Ukraine – particularly investments by individual households. But these cannot account for the whole increase, as larger-scale renewables investment takes longer to prepare. Therefore, the work done previously to speed up renewables deployment must also have been key to this acceleration.

Although more can and must be done, these developments show that EU member states are capable of increasing renewables installation when pushed to do so – without weakening EU biodiversity protection safeguards.

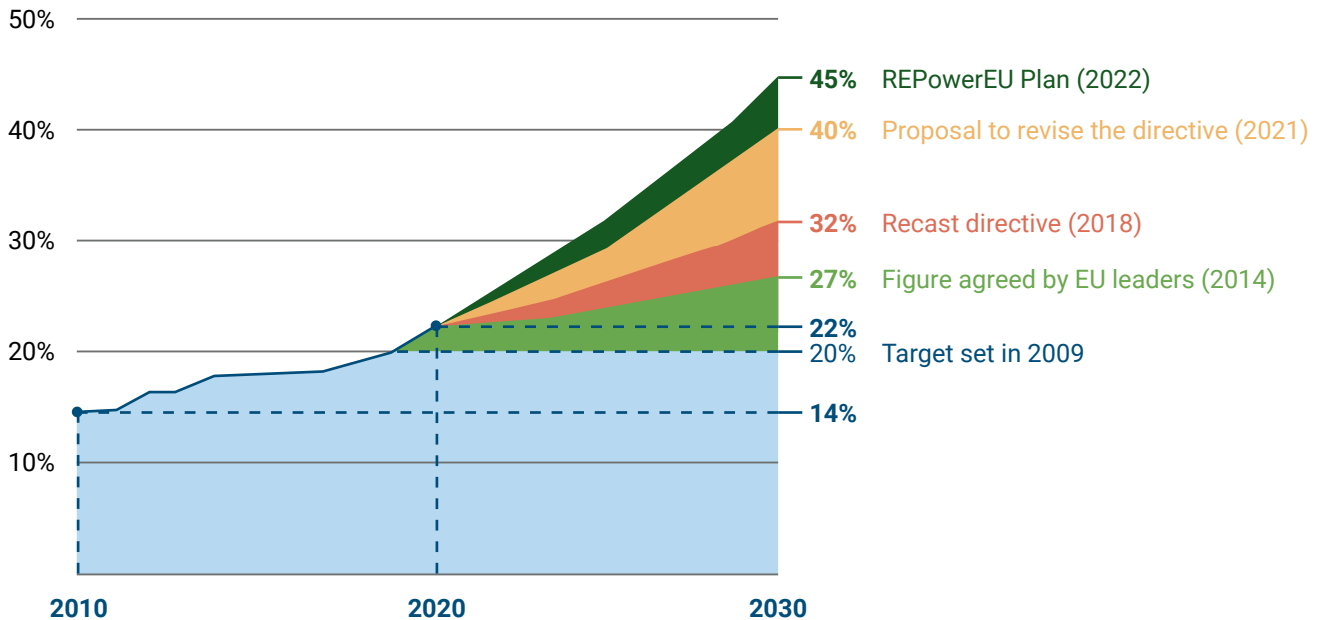
2.3 NEW INITIATIVES UNDER REPOWEREU

Since 2021, the EU's legislation on renewable energy has been subject to a series of new initiatives, which have increasingly impinged on its existing environmental legislation.

On 14 July 2021, the European Commission proposed a revision of the Renewable Energy Directive, including the target, as part of its Fit for 55 package.³⁹ However, before revision of the directive was completed, wholesale gas prices rocketed⁴⁰ and Russia launched its full-scale invasion of Ukraine on 24 February 2022, giving even greater urgency to the EU's efforts to boost renewable energy deployment. This led the European Commission to propose another round of amendments to the Renewable Energy Directive on 18 May 2022,⁴¹ as part of its so-called REPowerEU package, aimed at tackling the invasion's impacts on the EU energy sector (Figure 2).

2. BACKGROUND: THE NEED TO SPEED UP EU RENEWABLE ENERGY DEPLOYMENT

FIGURE 2. Evolution of renewable energy targets.



Source: European Commission, Renewable energy targets.

Before the amendments to the Renewable Energy Directive had been agreed on, in October 2022, the European Council called on the Council and the Commission to submit emergency measures on the basis of Article 122 of the Treaty on the Functioning of the EU in order to, amongst others, fast-track renewable energy permits.⁴²

Council Regulation 2022/2577 was formally adopted on 22 December, and entered into force on 30 December 2022.⁴³ It applies for 18 months, but by 31 December 2023, the Commission has to carry out a review of the regulation and may propose to prolong its validity.

As well as useful provisions aimed at speeding up small-scale solar and heat pumps, it contains provisions that contradict existing provisions of EU environmental legislation, particularly with regard to the concept of "overriding public interest" under the Habitats, Birds and Water Framework Directives and exemptions from the obligation to carry out environmental impact assessments (EIAs) for projects in designated renewables areas. These are discussed in Section 3.

In parallel to the development of the Council Regulation on renewables permits, updates to the Renewable

Energy Directive were agreed on in the European Parliament, and early on 30 March 2023, trilogue negotiations between the Council, Commission and Parliament resulted in a compromise text,⁴⁴ which, as of 20 June, has not yet been formally approved. Nevertheless, leaked texts show that the updated directive contains similar provisions to those of the Council Regulation. The main difference is that designated renewable energy areas are called "acceleration areas" and clearer instructions are provided on what kind of areas these can be and the process for designating them.

As noted above, the concept of acceleration areas should, in principle, be a highly effective innovation, as it aims at one of the key problems in renewable energy development in the EU – spatial planning. Requiring EU countries to focus on where they *can* build, instead of where they cannot, seems an appropriate way to identify the low-hanging fruits that can be realised fastest. However, the concept of acceleration areas has been coupled with wide-ranging derogations from EU environmental law – a controversial precedent that may, in practice, prove counterproductive.

3. LEGAL DYNAMICS AND CONTRADICTIONS

3.1 RENEWABLE ENERGY – A WIDE CATEGORY WITH VARYING IMPACTS

Solar and wind are the fastest-growing sources of renewable energy in the EU today, but the EU's definition of renewable energy is much wider,⁴⁵ and includes, amongst others, geothermal energy, hydropower and – if it complies with the criteria set out in the Renewable Energy Directive – bioenergy, including forest biomass. In fact, biomass is currently the main source of renewable energy in the EU and is mainly used in the heating and cooling sector.⁴⁶ This means that the environmental impacts of building and operating a renewable energy facility can vary massively, and sweeping cross-sectoral derogations are likely to have wide-ranging consequences.

For example, the impacts of solar happen mostly at the stage of mining and manufacturing,⁴⁷ but ground-mounted solar can also entail habitat loss if built on sensitive sites.⁴⁸ Depending on the location, wind farms may have very low on-site impacts, but can also entail collision fatalities for birds and bats, disturbance and displacement, barrier effects, habitat loss and degradation.⁴⁹

Forest biomass power and/or heat plants have major impacts, including greenhouse gas emissions, particulate matter pollution and deforestation,⁵⁰ and the EU's sustainability criteria are too timid to significantly limit these, even in the text of the Renewable Energy Directive agreed on 30 March 2023.⁵¹

Hydropower plants cause changes in river morphology and riverine habitats, as well as barriers to migration of protected species, turning live rivers into much-lower-quality reservoirs that cannot support the same species. Fish and other species are often killed or injured by turbines, and downstream of dams, the water flow is often reduced to a bare minimum that may not be sufficient to maintain the ecosystem. Hydropower plants also cause disruption of sediment dynamics, worsening coastal erosion – a particular concern in an era of climate chaos – and preventing sediment deposits from replenishing soil fertility downstream. They can also lower water tables downstream, thus impacting agriculture and food security, cause changes in seasonal flood cycles and cause chemical and temperature changes to water that affect which species are able to live there, as well as the water quality for

human activities such as irrigation and leisure.⁵² In some cases, they also directly lead to expropriation and resettlement of the local population.⁵³

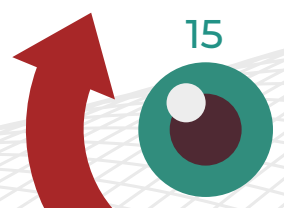
Given the EU's overarching policy goal of increasing the share of renewable energy, and taking into account the varying interests of member states, EU institutions have been reluctant to limit which types of renewables are promoted by EU legislation. This has led to contradictory situations in which, for example, the biodiversity strategy for 2030 sets a goal of restoring 25,000 km of free-flowing rivers,⁵⁴ but the Renewable Energy Directive allows the incentivisation of new hydropower construction via support schemes.

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Given the EU's overarching policy goal of increasing the share of renewable energy, and taking into account the varying interests of member states, EU institutions have been reluctant to limit which types of renewables are promoted by EU legislation.

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Whether one agrees with this laissez-faire approach or not, it leaves a great deal of flexibility to member states and makes detailed environmental assessments for individual projects absolutely crucial in those cases where they are required (though again, many smaller projects can be built with no environmental assessments at all). However, it is precisely these assessments that are being undermined by the EU's new renewable energy legislation.



3. LEGAL DYNAMICS AND CONTRADICTIONS

3.2 EXISTING ENVIRONMENTAL LEGISLATION AND RENEWABLE ENERGY PERMITS

Renewable energy development in the EU involves a mixture of national level rules – for example, on spatial planning and grid connections – and, depending on the technologies and locations involved, can also involve applying EU-level legislation, usually the following:

- **Strategic Environmental Assessment (SEA) Directive**,⁵⁵ which stipulates that assessments – including public consultations – need to be done for plans and programmes which are likely to have significant environmental effects, including energy plans or programmes. Given their wide scope, they are of a more general nature and are designed to ensure public participation at a stage when all options are open.
- **The EIA Directive**⁵⁶ lays out the process for project-level assessments, in contrast to the plan or programme level covered by the SEA Directive. It shows how to decide whether a project needs to be subject to an EIA and, if so, how to carry out the process – including public participation – and what aspects must be assessed. It also ensures access to justice, in line with the Aarhus Convention.⁵⁷
- **The Habitats**,⁵⁸ **Birds**⁵⁹ and **Water Framework**⁶⁰ **Directives** aim at maintaining and/or restoring certain habitats and species, as well as water bodies, and contain a general prohibition on activities that deteriorate their status. The Habitats and Birds Directives also stipulate the conditions for setting up the Natura 2000 network of protected areas. Each of the directives contains criteria that allow derogations under certain circumstances. When planning activities that may significantly impact Natura 2000 sites or deteriorate water quality, special assessments have to be done, known as "appropriate assessments" for the Habitats and Birds Directives, or "Article 4(7) assessments" under the Water Framework Directive (WFD). These are usually done together with EIA processes but form a discreet part of the assessment, so that a decision can be made on whether a derogation is justified or not.

Such legislation has been developed and refined over decades and is designed to ensure a balance between appropriate development and nature protection. In

principle, carrying out environmental assessments is not overly burdensome compared to the costs of failing to protect the environment – even if application of the procedures in some member states could be more effective.

Not all renewable energy projects require EIAs – it depends on the likelihood of having a significant impact based on the criteria laid out in the EIA Directive.

Project types listed in Annex 1 of the directive must always undergo EIAs. For renewable energy, this mainly means dams with a storage capacity of more than 10 million cubic metres, biomass thermal power plants with a heat output of 300 megawatts (MW) or more, and overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 km.

Projects listed in Annex 2 are subject to decisions by member state environmental authorities on whether they need an EIA based on criteria laid out in the directive. For renewable energy, these mainly include geothermal drilling, wind farms, power lines, biomass thermal power plants and hydropower plants of smaller capacity than above. Solar power is not mentioned in the directive but may require an EIA if located in a sensitive area.

As existing EU law does not require EIAs for projects that are not likely to have significant negative impacts, such as small solar plants, it is already proportional to the likely impacts.

Moreover, Article 1(3) of the EIA Directive already allows for exceptions from the obligation to carry out EIAs:

Member states may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

Similarly, if a project promoter wants to build on a Natura 2000 site, this is allowed if the project does not damage the conservation objectives of the site. If the project is likely to have significant impacts on the site's conservation goals, either individually or together with other projects, an appropriate assessment has to be undertaken. This must be done both at the more general level of plans or programmes, along with the SEA, to avoid conflicts early in the process, as well as at the project level in more detail. In

general, the project cannot go ahead if it is found that the impacts will indeed be significant.

However, Article 6.4 of the Habitats Directive lays down criteria for exceptional cases when such development may be allowed for reasons of overriding public interest, even if it does cause significant damage.⁶¹ The Birds and Water Framework Directives also have equivalent provisions, with a set of criteria to be fulfilled if a member state plans to allow a derogation for specific projects.

So, under normal circumstances, many renewable energy projects can go ahead under these directives – some with in-depth appropriate assessments and some without. In addition, some already receive derogations, despite the fact that this means that it has already been established during the permit process that the plants will have significant impacts on Natura 2000 areas or will deteriorate a river's water status. The Schwarze Sulm⁶² and Gratkorn⁶³ hydropower plants in Austria are amongst the many plants that have, controversially, received such derogations.⁶⁴

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81% of EU habitats are in poor or bad conservation status, and 60% of the EU's water bodies had not reached good status by the original deadline of 2015 set in the WFD.

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As mentioned above, 81% of EU habitats are in poor or bad conservation status,⁶⁵ and 60% of the EU's water bodies had not reached good status by the original deadline of 2015 set in the WFD.⁶⁶ They now need to do so by 2027 at the very latest. This, amongst others,⁶⁷ indicates that, in practice, too many derogations are granted, not too few. This may be a result of the directives themselves not being sufficiently stringent and allowing too many exemptions, poor implementation of the derogation provisions or – more likely – both.

As noted by the European Commission in February 2019:

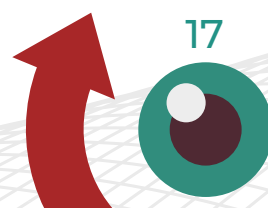
The exemptions foreseen in Article 4 of the WFD currently cover around half of Europe's water bodies. [...] Whilst the justifications for such exemptions have overall improved, their persistent wide use is an indicator of the significant efforts still needed to achieve good status or potential by 2027.⁶⁸

In 2016, the European Commission undertook a fitness check evaluation of the Habitats and Birds Directives, finding that they were fit for purpose.⁶⁹ The evaluation found that the clarity of these directives was also appreciated by project developers.⁷⁰ The Commission also completed a fitness check of the WFD in 2019, again finding that the legislation was fit for purpose.⁷¹

Given the poor state of the EU's biodiversity and water bodies, additional efforts need to be put in by member states to better implement these directives, and the European Commission needs to take more timely action in case of infringements or unjustified derogations.

3.3 ENVIRONMENTAL DEROGATIONS IN REGULATION 2022/2577 AND THE UPDATED RENEWABLE ENERGY DIRECTIVE

Articles 4 and 7 of Council Regulation 2022/2577 promote quicker deployment of small-scale solar equipment and heat pumps, and are uncontroversial, as such installations would not require environmental assessments under existing EU legislation. But Articles 3, 5 and 6 entail derogations from existing environmental legislation and public participation provisions for all kinds and sizes of renewable energy, including those with significant environmental impacts. Similar articles are also present in the agreed version of the new Renewable Energy Directive, but, as of mid-June 2023, these have not yet been finally adopted. The next two sections explain the main conflicts and contradictions – the first related to assessments under the Habitats Directive, the WFD and the Birds Directive, and the second regarding exemptions from the EIA Directive.



3. DRAFTING THE NRRPS: BETWEEN NATIONAL GOVERNMENTS, DOMESTIC STAKEHOLDERS AND THE EUROPEAN COMMISSION

3.4 "PRESUMPTION" OF OVERRIDING PUBLIC INTEREST

Article 3 of the regulation creates a presumption that the development of renewable energy projects is of "overriding public interest" for the purpose of certain provisions of the Habitats Directive, the WFD and the Birds Directive. Recital 8 specifies that this presumption is "rebuttable" and applies "except where there is clear evidence that those projects have major adverse effects on the environment which cannot be mitigated or compensated for". But each of these directives already sets out an overriding public interest test, which permits certain activities or projects for public interest reasons in circumstances where they have been identified as harmful.

If such a derogation is applied, it must be done by means of a case-by-case assessment – even under the new regulation – and in addition, other tests also have to be applied to ensure that such projects do not have major negative effects on the environment which cannot be avoided, mitigated or compensated for.

Article 6(4) of the Habitats Directive requires not only that an overriding public interest test be met, but also requires the member state to prove that there are no "alternative solutions" to the proposed development. The member state must also take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. These tests still need to be satisfied, regardless of the presumption created by the regulation. It is unclear whether the member state authorities fully understood this when they adopted the regulation and whether their environmental authorities were adequately consulted in the process – especially given that it was treated as an energy file and was developed very quickly.

Similarly, for any derogation from Article 9 of the Birds Directive to be applied, three conditions need to be met. No alternative satisfactory solutions exist; one of the reasons listed in Article 9(1) must occur – for example, imperative reasons of overriding public interest – and the conditions in Article 9(2) must be complied with.⁷² But Article 3 of the regulation only makes reference to overriding public interest, without underlining that, as the Birds Directive continues to be in force, the other conditions still need to be met as well.

Article 4(7) of the WFD also sets slightly different conditions for derogations, including that the reasons for the

modifications or alterations are set out and explained in the river basin management plan covering the water body in question; the project is of overriding public interest and/or the benefits to the environment and to society of achieving the directive's objectives are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development. Again, an absence of feasible alternatives has to be proven and adequate mitigation measures applied. This also applies to projects assessed under the regulation, because the WFD remains in force.

The main change that the regulation brings is that where, during the appropriate assessment process, there are found to be no suitable alternatives, the assessment will now be weighted in favour of deciding that a certain project is of overriding public interest, so the burden of proof is not on the permitting authority to prove this, it is on the public to prove adverse effects on the environment that cannot be mitigated or compensated for.

The Council's rationale for allowing renewable energy projects to be presumed as being of overriding public interest and serving public health and safety under the regulation is that this would allow such projects to benefit from a simplified assessment, according to Recital 8.

But, given that the appropriate assessment and/or Article 4(7) assessment under the WFD still needs to be carried out for projects that may deteriorate water bodies or protected habitats or species, and that the absence of alternatives still needs to be proven, it is highly unlikely that Article 3 will create a simplified assessment. The only element of procedural simplification is that renewable energy projects with a significant impact on priority habitats and/or species⁷³ in Natura 2000 sites can now be authorised without the need for an opinion from the European Commission – but this does not simplify all such processes because such an opinion was not needed for cases that did not involve priority habitats or species.

It is more likely to create confusion, as there is already ample case law and Commission guidance on what constitutes overriding public interest in the context of these directives,⁷⁴ but member states are now required to take into account a different approach for renewable energy projects. The regulation lacks clarity about how this new rebuttable presumption should be applied and fails to underline that the slightly differing tests under each directive still apply.

What Article 3 does is to tip derogation assessments in favour of the developer, by making sure that renewable energy projects are "given priority when balancing legal interests in the individual case" when deciding whether the project is of overriding public interest, despite the damage that it will cause to Natura 2000 site conservation objectives or status of water bodies.

This only helps the most damaging renewable energy plants during the appropriate assessment process or examination under Article 4(7) of the WFD, because other plants do not need such derogations at all and, as mentioned above, even very damaging plants are sometimes already able to obtain them after the assessment has been carried out and the various criteria analysed.

Since genuine public participation at an early stage is key to avoiding resistance to projects later on,⁷⁵ eroding the quality of these assessment processes is also likely to create more – not fewer – public grievances against projects with significant adverse impacts on Natura 2000 sites and water bodies and result in more legal challenges to decisions allowing derogations, thus creating an unnecessary distraction from speeding up low-impact forms of renewables in appropriate locations.

It is also unclear how member states will be able to ensure that public participation in appropriate assessments and WFD assessments under Article 4(7) fulfils the Aarhus Convention requirement that it must take place "when all options are open and effective public participation can take place" (Article 6.4). Even if the recital of the regulation states that the presumption of overriding public interest is "rebuttable", Article 3 does not explain how this is likely to work in practice, if renewable energy projects are legally given priority. It seems unlikely that effective public participation can take place, and that all options are truly open, if there is a presumption from the outset that the project can go ahead.

The Council has attempted to counter this objection by including the clause that:

Concerning species protection, the preceding sentence shall only apply if and to the extent that appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken and sufficient financial resources as well as areas are made available for that purpose.

But this cannot replace the derogation criteria in the Habitats, Birds and Water Framework Directives explained above.

In addition, there is a disconnect in timing. Appropriate species conservation measures take time to implement and may or may not be successful. By the time it is clear whether they have truly been undertaken and have been effective, the renewable energy project will have long since obtained its derogation and been built. Thus, any developer can state that they will undertake such measures to obtain a derogation, and by the time it becomes clear whether the measures have been undertaken and whether they work, it is too late to revoke the derogation. Alternatively, if they need to be in place and functioning before construction takes place – which should be the case if this clause is to have any meaning – then this article does not offer any simplification or acceleration of the process at all.

Overall, Article 9 of the Birds Directive, Article 6(4) of the Habitats Directive and Article 4(7) of the WFD govern *exceptions* to the member states' obligations to adopt conservation measures in line with each directive and, as such, must be interpreted strictly and narrowly.⁷⁶

Establishing a derogation that is potentially EU-wide (subject to member states' discretion to exclude certain areas⁷⁷) is in contravention of the very concept of overriding public interest, which by its nature is to be used only under very specific and exceptional circumstances.⁷⁸

The fact that a renewable energy installation may contribute to tackling climate change – though this is not a given in the case of forest biomass or some geothermal plants with high methane emissions – is one aspect that should be taken into account when making a decision on overriding public interest, but it still has to be demonstrated that there are no suitable alternatives to achieve the same goal that would cause less damage.

3.5 EXEMPTIONS FROM CARRYING OUT AN EIA

As outlined above, the EIA Directive sets out which kinds of projects must be subject to EIAs, the criteria that must be used to determine whether such an

3. DRAFTING THE NRRPS: BETWEEN NATIONAL GOVERNMENTS, DOMESTIC STAKEHOLDERS AND THE EUROPEAN COMMISSION

assessment is needed, what the EIA report needs to contain, how the public is to be consulted, how the results of the consultation are to be taken into account and stipulates the conditions for challenging the decision taken by the authorities.

Yet, Article 6 of the regulation circumvents these provisions by allowing member states to exempt renewable energy projects, energy storage projects and renewables-related electricity grid projects from EIAs,⁷⁹

provided that the project is located in a dedicated renewable or grid area for a related grid infrastructure which is necessary to integrate renewable energy into the electricity system, if member states have set any renewable or grid area, and that the area has been subjected to a strategic environmental assessment [...].^{80 81}

So, if member states have defined specific renewable energy zones, individual renewable energy projects – even highly damaging ones, such as hydropower and forest biomass plants – can move forward without undertaking project-level EIAs, if a more general strategic environmental assessment has been undertaken.

Thus, although the EIA Directive remains in force, the regulation creates a parallel decision-making framework, in which there is no obligation to use the criteria stipulated by the directive, no need for any study or public consultation and no guarantee of the right to legally challenge EIA approval decisions.

Public participation and access to justice exemptions are particularly problematic, not only for the pragmatic reason that excluding the public from decision-making often backfires, but also because the EIA Directive partly transposes the EU's obligations under the Aarhus Convention.⁸² So, it is not just EU environmental law that is undermined by the regulation, but also the EU's international obligations.

Carrying out an SEA on the plan or programme, which designates a dedicated renewable or grid area, can in no way be considered a substitute for carrying out a project-level EIA procedure. This is because SEAs have a much wider scope, covering whole plans or programmes, and it cannot be expected that they will contain a thorough analysis of project-level impacts, nor that they will be able to prescribe appropriate project-level mitigation measures. The SEA Directive stipulates only much more generally what is to be included in the SEA study, while

the EIA Directive contains more precise instructions for the project level. This is why there are two different directives at the EU level – one aimed at ensuring early public participation, but at a more general level (corresponding to Article 7 of the Aarhus Convention), and one aimed at ensuring public participation in the preparation of specific projects (corresponding to Article 6 of the Aarhus Convention).

The above deficiencies are further exacerbated by the fact that the concept of a "dedicated renewable or grid area" is not defined in the regulation. Thus, there is a danger that member states could interpret this article very broadly indeed. For example, if a spatial plan includes plans for renewable energy installations, and has been subject to an SEA – no matter its quality – this could be argued to fall under the concept of "a dedicated renewable or grid area".

Compared to Article 1(3) of the existing EIA Directive, the regulation greatly widens the category of exempted projects to include renewable energy projects that do not have defence or response to civil emergencies as their sole purpose. Thus, it is in direct conflict with the EIA Directive and Article 6 of the Aarhus Convention, as the public is denied the right to participate in project-level decision-making processes on projects that significantly impact the environment. It might be objected that the urgency of building renewable energy justifies such a measure. However, there is still plenty of potential for building renewables that do not need an EIA at all (see Section 5.1). And public consultations are not cited as barriers in the *RES simplify* and *Barriers and best practices* studies discussed above. In fact, the EIA Directive stipulates just 30 days as the minimum period for public consultation, and the studies recommend *more* public engagement, not less.

Since the right of access to justice exists, irrespective of the regulation, this broad derogation from the need to carry out an EIA may also result in increased legal challenges that would undermine its goal of speeding up renewable energy development.

Article 5 of the regulation, dedicated to speeding up procedures for renewable energy repowering projects also creates conflicts with the existing EIA Directive. For such projects, EIAs are usually only needed if there is a substantial increase in capacity or if the site is particularly sensitive, so many such projects do not need any such assessment. This must always be decided in line with criteria from Annex III of the EIA Directive.

But the regulation stipulates that, in cases where such an assessment is needed, the permit process may not exceed six months. This is not sufficient to carry out an effective process, including genuine public participation.

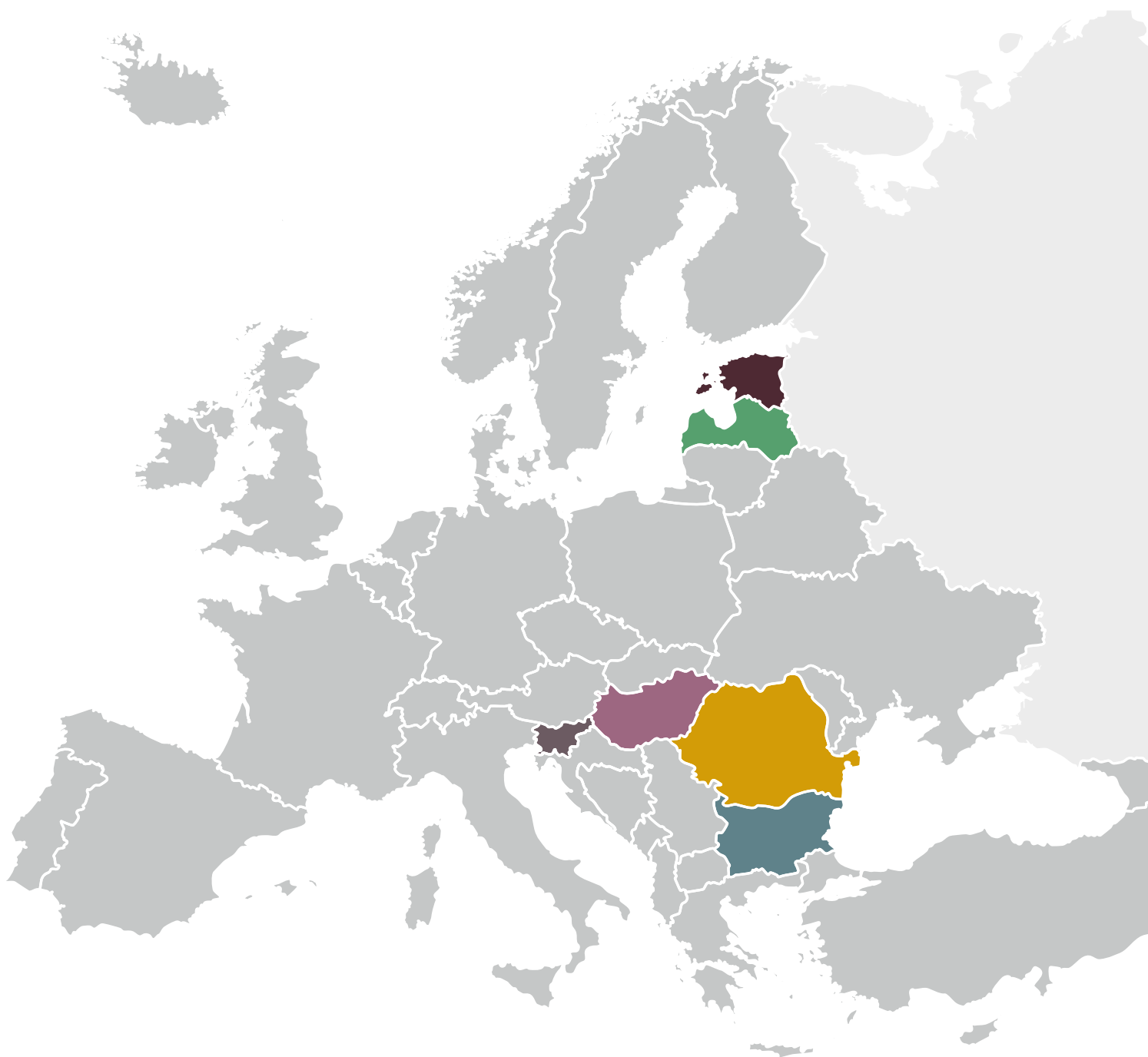
While decisionmakers should, of course, ensure that such processes are carried out as efficiently as possible, the EIA Directive requirements still need to be respected. This can be ensured, amongst others, by ensuring adequate staffing of the relevant permit departments in public authorities.⁸³

The regulation also limits such an assessment to changes and additions compared to the original project, which conflicts with the EIA Directive's requirement to examine the whole project and to examine cumulative impacts.

Given the likely confusion and conflicting provisions caused by Regulation 2022/2577, the European Commission has pledged to publish guidance on its application, with regard to environmental law. However, as of 20 June 2023, it does not yet appear to have done so.



4. CASE STUDIES: BIODIVERSITY-DAMAGING RENEWABLE ENERGY IN CENTRAL AND EASTERN EUROPEAN MEMBER STATES' RECOVERY PLANS



In parallel with the EU's increasing climate ambitions and response to Russia's war on Ukraine, the member states have been developing their NRRPs to access funds from the RRF. This has happened in two stages – firstly, with the development of the main recovery plans, which were supposed to be submitted by 30 April 2021, and now with the additional optional REPowerEU chapters, which were supposed to be submitted by 30 April 2023. The latter allow the states to use a combination of leftover recovery funds for loans and additional sources made available by the EU (see Section 1).

This section first gives an overview of previous reports on the central and eastern European member states' recovery plans and their plans for renewable energy. It then provides an update on current plans under their REPowerEU chapters, to the extent that they are known at the time of writing (mid-June 2023). It looks in more detail at three case studies on renewable energy plans that are causing biodiversity-related conflicts, to show how member states apply EU law in practice and to better understand how to avoid such conflicts in the further use of the recovery funds and REPowerEU implementation.

In 2021 and 2022, CEE Bankwatch Network and EuroNatur, together with partners from central and eastern European EU member states, published reports examining the implications of the countries' recovery plans for biodiversity. The May 2021 report found that the recovery plans contained measures that would damage biodiversity and that the drafting process had been shrouded in secrecy in many countries.⁸⁴

A year later, in June 2022,⁸⁵ most – though not all – recovery plans had been approved. Although some progress on introducing biodiversity measures had been made and some harmful measures removed, many plans had remained the same. This report, therefore, highlighted controversial measures in recovery plans in nine central and eastern European countries, mainly in the water management, forestry and renewable energy sectors.

In Estonia's recovery plan,⁸⁶ a poorly described project entitled "*value enhancement of bioresources*", worth €23.8 million,⁸⁷ raised concerns among civil society that it could be used to further increase the pressure on the country's beleaguered forests, which are suffering from overlogging to satisfy the EU demand for forest biomass.

Bulgaria's recovery and resilience plan included a measure entitled "*Support scheme for the deployment of a minimum of 1.4 GW of renewable energy with storage in Bulgaria*", including investment in renewable and storage facilities to be financed with €342 million from the RRF (33%) and €684 million from private funding (67%). The recovery plan does not list which specific projects are to be supported, but the types of renewable energy mentioned are photovoltaics, wind turbines and "use of water and marine resources" – which presumably means hydropower and offshore wind.

After several years of stagnating renewables development in Bulgaria, it is clearly crucial to move forward in this field. However, the issue of balancing biodiversity and renewable energy is crucial in view of Bulgaria's history of non-compliance with EU legislation on nature conservation in this field, and the European Commission should have been extra-vigilant when assessing the plan.

The construction of wind turbines in special protected areas designated under the Birds Directive and the lack of proper assessment of the impacts on Natura 2000 sites has already resulted in proceedings before the European Court of Justice. The Court ruled that, by not assessing the impacts of the wind turbines on the habitat of birds, Bulgaria violated two EU nature directives.⁸⁸ An infringement procedure is also open against Bulgaria for not assessing the cumulative impacts of its plans and projects, including an investigation into building small hydropower plants in Natura 2000, damaging the structure of habitats of fish species from Annex II of the Habitats Directive.⁸⁹

Unlike in many countries, Bulgaria's recovery plan was subject to an SEA, which could help build consensus on what should be built, where and how, but the European Commission did not wait for it to be completed before approving the plan on 7 April 2022. This did not send a clear message to Bulgaria about the importance of assessing its plans against their environmental impact and following EU legislation.

However, as of May 2023, the question of renewable energy sites in Bulgaria is overshadowed by uncertainties about its recovery funds in general, given that it appears to be reneging on some of the decarbonisation reforms it earlier committed to:⁹⁰ binding targets for the reduction of the carbon dioxide emissions from electricity generation to 40% below 2019 levels by 2025; legislation on decarbonisation, including a deadline for the phase-out of coal and lignite power plants; and a

4. CASE STUDIES: BIODIVERSITY-DAMAGING RENEWABLE ENERGY IN CENTRAL AND EASTERN EUROPEAN MEMBER STATES' RECOVERY PLANS

regulatory cap on their carbon dioxide emissions applicable as of 1 January 2026.⁹¹ Such setbacks reflect a widespread ambivalence towards the energy transition in Bulgaria, caused partly by vested interests casting it as something "imposed by the EU", but also by previous painful experience with renewable energy development in unsuitable locations, supported by feed-in tariffs that caused widespread public resentment.⁹²

Recovery-associated reforms are not going smoothly in Poland either. Amongst others, the country was obliged to relax its rules on the siting of onshore wind farms as a condition for accessing recovery funds.⁹³ In March 2023, it did so, but still retained a minimum distance of 700 metres between wind turbines and the nearest residential buildings, rather than the originally proposed 500 metres, which would have allowed much more wind development. It remains unclear whether the new rules will lead to a significant boost for wind power generation.⁹⁴ Such an approach to setting conditions, in principle, represents a smart use of the recovery funds to influence areas, such as spatial planning, that are not directly in the EU's competence, but can prevent countries from reaching their renewables targets. However, the Bulgarian and Polish examples show that it is hard to ensure their success without building a wider social consensus around them.

Positively, one of the reforms carried out by Croatia under its recovery plan was the development of a study on how to remove barriers to renewable energy permits, which was published in 2022. Its findings concentrated mainly on the need to increase administrative capacity to speed up the process.⁹⁵ Like the *RES simplify* and *Barriers and best practices* studies, it did not challenge EU environmental legislation, but identified ways to better implement it.

As explained above, in 2023, the member states have had a second chance to benefit from recovery funds by submitting additional "REPowerEU chapters" for their recovery plans, as explained above. Those who chose to do so should have submitted them to the European Commission by 30 April 2023 – though this deadline was not binding.

As of 12 June 2023, of the central and eastern member states, only Estonia and Slovakia are known to have submitted a REPowerEU chapter, though Romania also seems to have at least submitted an informal draft. Estonia submitted its chapter on 9 March, making it the first country to do so.⁹⁶ The document has not been

published, but a table of accepted amendments has been available since late December 2022.⁹⁷ Slovakia submitted its chapter on 26 April,⁹⁸ but, as of late May 2023, it is not available to the public as yet.

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Some of these recovery investments have the potential to contribute to increasing the EU's share of sustainable renewables, but, in the context of the REPowerEU-related environmental deregulation of the renewable energy sector, there is more of a threat than ever that harmful investments will be pushed through under the guise of energy security.

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The contents of some of the other central and eastern European countries' REPowerEU chapters are also known to varying extents, either due to media statements or draft documents being available. A compilation of renewable-energy-related plans is laid out in Table 1.

Some of these recovery investments have the potential to contribute to increasing the EU's share of sustainable renewables, but, in the context of the REPowerEU-related environmental deregulation of the renewable energy sector, there is more of a threat than ever that harmful investments will be pushed through under the guise of energy security. The following case studies look at examples from Romania, Slovenia, Latvia and Estonia, where the recovery funds are still in danger of being used for damaging renewable energy projects.

TABLE 1. Known renewable-energy-related plans from REPowerEU chapters of central and eastern European member states, as of 20 June 2023.

COUNTRY	NEW POSITIVE INVESTMENTS	POTENTIALLY BIODIVERSITY-DAMAGING RENEWABLES
CZECHIA	Replacement of gas boilers for low-income households, support for distribution networks, energy efficiency of buildings for socially vulnerable and middle-income groups, and comprehensive renovation of public buildings (loans)	N/A
ESTONIA	New reform for accelerating wind energy deployment (€31.8 million) to reach the new 100% renewable electricity target by 2030. However, in reality, the reform puts additional pressure on forest land and biodiversity	Reform appears to entail a green light to build wind parks on forest land and may allow a committee on strategic investments to decide on 'overriding public interest' instead of the environmental permitting authority.
HUNGARY	Grid development, electrification of transport, and energy-efficiency investments in the residential and business sectors	Taking part in the construction of a hydropower plant in Serbia (Bistrica).
LATVIA	Electricity grid modernisation in urban areas to promote electrification (heat pumps, electric vehicles), as well as increasing the capacity of transmission lines	Not yet clear.
POLAND	Energy grid for rural areas (€16 billion – though too large a sum to be spent in such a short time)	Biogas production (low or high impact, depending on source and scale).
ROMANIA	Strengthening energy independence of communities, modernising the grid and training programmes	€100 million for controversial hydropower plants; forest biomass power plants.
SLOVAKIA	Renewables installation and improvement in electricity grid. However, both could be financed from RRF loans rather than the planned grants	N/A

Source: Compilation by CEE Bankwatch Network based on information collected at the national level via presentations and meetings.⁹⁹

4. CASE STUDIES: BIODIVERSITY-DAMAGING RENEWABLE ENERGY IN CENTRAL AND EASTERN EUROPEAN MEMBER STATES' RECOVERY PLANS

ROMANIA'S DAMAGING HYDROPOWER PLANS

For many years, debates have raged about attempts by the Romanian state-owned company Hidroelectrica to build hydropower plants in sensitive locations. The plans range from 20 to 45 years old, and no information is publicly available on their feasibility under today's economic, environmental and hydrological conditions. Nevertheless, in recent years, the Romanian government has made repeated attempts to push these projects forward via special legislative measures.

Among these was December 2022's Emergency Ordinance 175/100 an attempt to push forward nine damaging hydropower projects started in the 1980s or 1990s, some of which have already been declared illegal by the Romanian justice system. It exempted the hydropower plants from the requirement to carry out an EIA, despite their obviously significant environmental impacts.

The ordinance also declared the government's intention to use the REPowerEU chapter of the recovery plan to finance these projects.

These include the notorious Bumbesti-Livezeni hydropower project in the Jiu Gorge National Park. The project would irreversibly destroy the last free-flowing major river in Romania, the national park and three other Natura 2000 sites. Construction originally began in 2004, but most of the building was done in 2015-2017, after Hidroelectrica received construction permits in 2012 and 2016. The permits were issued after the Jiu Gorge had been declared a national park, based on an old environmental decision from 2004, without an EIA, as at the time Romania had not adopted any EIA legislation. A 2017 final court decision by the Bucharest Court of Appeal annulled the two construction permits.¹⁰¹

Hidroelectrica is quoted as saying that the project is 60-90% built and has since tried two extraordinary appeals against the 2017 court decision but lost, and has also split the project into pieces, trying to obtain permits for parts of it, such as the transmission lines (on which a court case is ongoing) or trying to obtain an environmental permit only for the part that is still left to build (cancelled in court).¹⁰²

The Rastolita hydropower plant has also attracted major controversy.¹⁰³ Located in the Călimani-Gurghiu (ROSCI0019) and Defileul Mureşului Superior (ROSPA0030) Natura 2000 sites, construction on the dam began in 1990 and was abandoned quite soon after.

If finalised, the project would adversely affect the ecological status of at least ten bodies of water, eight of which will be seriously damaged, and thus, violate the non-deterioration principle established by the WFD. The affected water bodies and forest areas are habitats for a number of species of European importance, such as the Danube salmon, otter and lynx, so endangering them is a breach of the Habitats and Birds Directives in a situation where alternatives to the project exist. There is an ongoing court case for the annulment of the project's EIA screening decision.¹⁰⁴

Exempting projects from the requirement to carry out an EIA is allowed under the EIA Directive only if they either solely serve defence purposes or, in exceptional cases, for other projects if the application of the EIA Directive's provisions would result in adversely affecting the purpose of the project, provided that the objectives of the EIA Directive are met. Neither of these exceptions apply in this case, as the hydropower plants are neither defence projects nor would applying the EIA Directive result in adversely affecting the purpose of the projects, namely, to generate electricity.

Even if the Emergency Ordinance had been adopted after EU Council Regulation 2022/2577, exempting the plants from EIA procedures would not have been allowed, since they are not part of designated renewable energy areas, plans for which have been subject to SEAs. Thus, the move is clearly illegal under EU law, even taking the new regulation into account.

In March 2023, it was reported that Romania's REPowerEU draft chapter would include €200 million for the completion of two unnamed hydropower plants with a total of 100 MW.

In response to concerns expressed by civil society organisations regarding the Romanian government's intentions, the European Commission stated that any amendment to the Romanian NRRP, including any potential project under its upcoming REPowerEU chapter, will be subject to a thorough assessment to ensure full compliance with the RRF Regulation and other relevant EU legislation, and that compliance will also be checked with the "do no significant harm" principle, in line with the Commission's technical guidance.¹⁰⁵

In May 2023, Bankwatch Romania submitted an infringement request to the European Commission, seeking repeal of the Emergency Ordinance.¹⁰⁶ The same day, the media also reported that the European Commission

had refused to accept Romania's draft REPowerEU chapter in its current form,¹⁰⁷ but it is not clear what the grounds for this were.

Given the wording in the Emergency Ordinance, it seems the Romanian government's decision to exempt the hydropower projects from EIAs was mainly driven by the tight REPowerEU deadlines, which require all recovery fund disbursements, including those for REPowerEU, to take place by the end of 2026. This timetable is unrealistic for building most of the hydropower plants covered by the ordinance.

If the government had been serious about ramping up its renewables capacity, it would have prioritised measures to make a difference much more quickly, such as energy-savings investments, installing rooftop solar and heat pumps, as well as low-impact utility-scale solar and wind projects outside of sensitive areas.

SLOVENIA – MOKRICE HYDROPOWER PLANT

The Mokrice hydropower plant, with a capacity of 28.05 MW, would be situated in the south east of Slovenia on the river Sava near the Croatian border, downstream from the town of Brežice. It would be the last and most controversial of a series of hydropower plants that have been built on the Sava since 2002 – Boštanj, Arto-Blanica, Krško and Brežice. The plant would impact about 11 km of the Sava river, the confluence of the Krka river with the Sava, the Sava floodplain and downstream sections in Croatia.

Mokrice would disrupt no fewer than six Natura 2000 sites, designated, amongst others, to protect threatened species such as the endangered Danube salmon (*Hucho hucho*), the European pond turtle (*Emys orbicularis*), the olm (*Proteus anguinus*) and the large copper butterfly (*Lycaena dispar*).

The Slovenian recovery plan¹⁰⁸ sets aside €50 million for "renewables", including hydropower, without specifying which projects, so it is very likely that Mokrice was meant, as it is the only such mature hydropower project currently under development.

However, the former government's decisions to declare Mokrice a project of overriding interest, despite the fact it would disrupt no fewer than six Natura 2000 sites,

have been successfully challenged in court twice by the Slovenian Native Fish Society.

Most recently, in May 2023, the Slovenian Administrative Court identified both procedural and substantive violations during decision-making and ruled that the appropriate assessment was highly flawed, failing, amongst others, to properly examine cumulative impacts, ensure connectivity between the Krka and Sotla river, and properly assess the impacts of silting.¹⁰⁹ The ruling annuls the decision and returns the process back to the beginning.

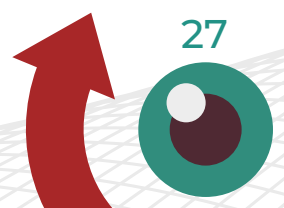
Following the court ruling, the project's future is uncertain, but the project promoter, Hidroelektrarne na Spodnji Savi (HE-SS), clearly sees it as a delay and not a cancellation. Following the ruling, HE-SS appealed to the authorities to reissue the approval again as soon as possible.¹¹⁰

Even if the court had ruled differently, it is unlikely that the plant could have been built by 2026 – on time to receive RRF funds – which might be one of the reasons, – along with fear of attracting public outcry – why the government was hesitant to name it in the recovery plan.

The ruling came on time to make adjustments in Slovenia's recovery plan as part of its REPowerEU chapter, but it is unclear whether it will do so. A first document called the "Draft starting points for the new REPowerEU chapter of the plan" was presented on 10 May,¹¹¹ just before the ruling.

Plans for the REPowerEU chapter include various reforms and investments to increase renewable energy use in Slovenia, for example, the adoption of an act on the siting of facilities for the production of electricity from renewable energy sources – already under development for some time¹¹² – while investments include restructuring district energy systems towards renewable energy (€20 million); energy efficiency, renewable energy and decarbonisation of the economy, primarily in industry (€42 million); strengthening the electricity distribution network for better uptake of renewables and heat pumps (€20 million); and investing in infrastructure for alternative fuels in transport and zero-emission mobility (€42 million).

All of these could be positive but some also entail further risks for biodiversity. The draft act on siting facilities mostly concentrates on ground-mounted solar and wind energy, which makes sense as these sources are underused in the country, but it repeats the provision from Council Regulation 2022/2577 of presuming these to be of overriding public interest.



4. CASE STUDIES: BIODIVERSITY-DAMAGING RENEWABLE ENERGY IN CENTRAL AND EASTERN EUROPEAN MEMBER STATES' RECOVERY PLANS

It opens up the potential for the use of potentially beneficial agri-solar technologies and allows the development of solar plants on former mining sites, road noise barriers, former landfills and other brownfield sites, which should have been done long ago, but it also opens the possibility of building wind plants in forested areas, thus increasing pressure on the country's biodiversity and carbon sinks.

The renewable district heating measure could be positive if it were directed towards the use of solar thermal, geothermal, storage or heat pumps, but the first source mentioned in the document is forest biomass, which would increase pressure on forests. Similarly, the €42 million to increase renewable energy use in industry is, in principle, positive, but its environmental impacts depend on details that are not currently available.

Like many of the other recovery plans, Slovenia's plan demonstrates the difficulty of understanding the plan's positive and negative environmental impacts without understanding exactly which projects are planned. Given the short timeframe for implementation of the plans, it is not clear why the Commission is willing to accept such vagueness. If in mid-2023 the exact names of the investment projects are not even known, it seems unlikely that they will be implemented by 2026.

WIND FARMS IN BALTIC FORESTS

Estonia and Latvia have so far underused their wind energy resources but are both overexploiting their forests. As of April 2023, Estonia has 320 MW of installed wind capacity,¹¹³ and Latvia has only 137 MW.¹¹⁴ Both countries have more than half of their surface area covered by forest land,¹¹⁵ at least in theory, but tree-cover loss in natural forests has been continuously increasing since 2013.¹¹⁶ The harvested forest areas have seen considerable expansion: when comparing the periods 2016 to 2018 with 2004 to 2015, the areas increased by 32% in Latvia and 85% in Estonia, with clear-cutting the dominant method of felling.¹¹⁷

This has correlated with increases in exports of biomass pellets to countries such as the Netherlands, Denmark and the UK and has also affected forest areas belonging to the Natura 2000 network.¹¹⁸ Environmental civil society organisations have repeatedly expressed their concerns, arguing that the logging rates and practices

are unsustainable and detrimental to forest habitats. For example, one of the most highly endangered species in Estonia, the flying squirrel, is strongly affected by loss and fragmentation of forest habitats, and in Latvia, the hazel grouse (a non-migratory woodland bird) suffered from a decline of 79% between 2005 and 2018.¹¹⁹

Yet, as well as the pressure from biomass production, both countries have indicated their intentions to open up forest land to wind farm developments as part of their recovery plans. Increasing wind power should be a positive development, but the emphasis on using forest land rather than other locations, such as intensively farmed agricultural land (bird migration routes permitting), raises questions about the biodiversity impacts of such moves.

Latvia's national recovery plan¹²⁰ investment 1.2.1.5.i. originally aimed to modernise the country's energy infrastructure with a total budget of €80 million, but the final version unexpectedly included a new element that was not present in the draft. Namely, support for the promotion and building of wind parks on state forest land was added, without specifying particular locations or financing allocations, so it is not entirely clear whether it is an investment that will receive recovery funding or more of a reform under the wrong heading. This section on wind farms in forests was not available for public discussion at the time the SEA was carried out, which is not acceptable for potentially large-scale investments that can significantly affect the environment and biodiversity, including habitats and species of EU importance.

Although, as mentioned above, Estonia's original recovery plan concentrated more on biomass value enhancement, its REPowerEU chapter, submitted to the Commission on 9 March 2023, also introduces a reform to accelerate wind energy deployment (€31.8 million), so that by 2030 it will be possible to produce 100% of Estonia's electricity consumption from renewable sources.¹²¹ The main part of the reform consists of a revision of laws to shorten the three most time-consuming procedures: spatial planning; permit procedures; and EIA.

So far, an audit of the current situation has taken place,¹²² and in March 2023, a public consultation was held on a concept note outlining planned changes to the law on renewable energy.¹²³ The audit is clearly inspired by Council Regulation 2022/2577 and the updated Renewable Energy Directive, as it proposes, amongst others, to introduce renewables acceleration areas and declare certain renewable energy projects – selected by a committee as projects of national interest – to be of overriding public

interest, without explaining why the current provisions under Article 29 of the Environmental Impact Assessment and Environmental Management System Act¹²⁴ are insufficient in this regard.

The concept document for the new law is more targeted and describes planned changes, such as making it possible to skip certain stages of spatial planning, shortening the EIA process by not holding a separate consultation period for institutions and potential steps to speed up the work of the administrative courts. The possibility of making it easier to build wind farms in forested areas is mentioned, together with a compensation scheme, in which the costs of replacement planting are covered by a fee added to the Environmental Fees Act, which is paid by the developer of the wind farm. However, this is not explored in detail, so it is not clear how it would work and whether it would be effective in tackling deforestation from either quantity or quality points of view.

Wind farms in forests may have a negative impact on biodiversity, including forest habitats of EU importance and protected bird and bat species, as well as reducing countries' carbon sinks. So, although degraded forest land may be one of the options for wind farms, any moves in this direction need to be done with great caution. Moreover, the potential of intensive agricultural and other non-forest lands, as well as offshore areas for building wind farms, is not even close to exhausted – even if these also have to be carefully assessed for impacts on bird migration routes and other biodiversity aspects.



5. TRADE-OFFS

This section examines whether trade-offs between renewable energy and biodiversity are currently needed in the EU and which courses of action might help to prevent them. It also looks at how we should decide on priorities in cases where conflicts do occur.

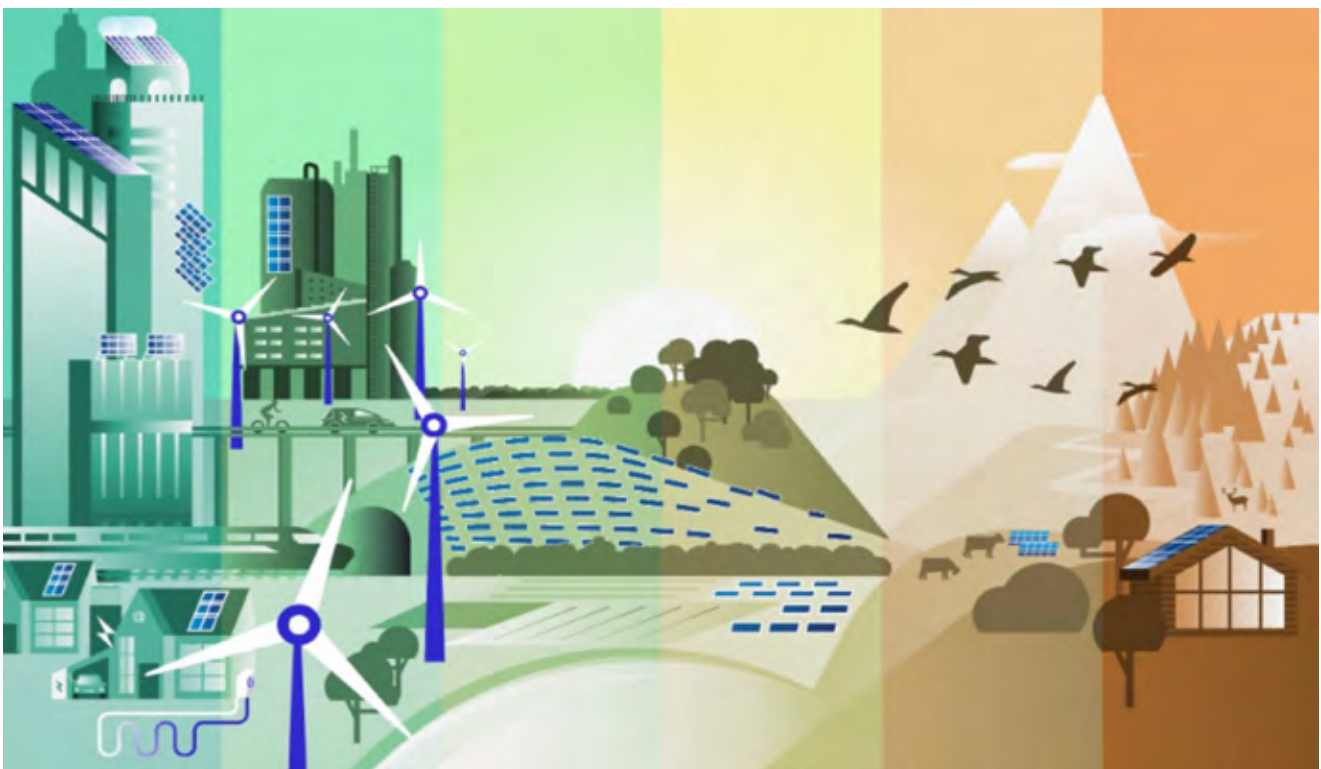
All kinds of construction have certain environmental impacts, ranging from the mining of the materials – often in dangerous and polluting conditions in countries with poor environmental governance – through processing, manufacturing and transport, to the actual construction and operation of the facilities themselves. So, energy waste and energy use need to be minimised if we are to move towards a more environmentally and socially sustainable economy. This is why energy efficiency and savings must always be a priority. But, to provide a sufficient amount of energy for our needs, while tackling climate change and pollution, a massive and speedy transformation of the economy towards the lowest-impact energies – that is, sustainable forms of renewable energy – has to take place.

In the current situation in the EU, many options still exist for speeding up renewable energy that do not require major trade-offs regarding damage to sensitive biodiversity-rich areas, even if conflicts around specific locations will sometimes occur.

If we consider renewable energy development as a continuum, as in Figure 3, the most environmentally acceptable projects are those in built-up areas. Some areas of the countryside are suitable for solar and wind development as well, particularly agri-solar, which can be combined with some types of farming. In more sensitive areas, fewer types of renewable energy can be implemented without causing significant impacts, but still some can.

Existing EU environmental law does not require non-damaging projects in Natura 2000 areas or on water bodies to undergo appropriate assessment processes or to obtain derogations. Figure 3 shows the optimal gradation of renewable energy zoning, with most projects in built-up areas and fewest in the very sensitive areas towards the right.

FIGURE 3. Optimal zoning of renewable energy development.



Source: European Environment Bureau, 2022.

The situation in reality is already far from this ideal, however. This is partly because much of the potential in built-up areas is not yet used – despite strong growth in rooftop solar – because of barriers such as a lack of qualified installers,¹²⁵ or in some cases insufficient incentives or legal frameworks. But for wind power, most of the potential is outside of built-up areas.



To provide a sufficient amount of energy for our needs, while tackling climate change and pollution, a massive and speedy transformation of the economy towards the lowest-impact energies – that is, sustainable forms of renewable energy – has to take place.



A 2019 study by the EU's Joint Research Centre found that EU rooftops alone could potentially produce 680 terawatt hours of solar electricity annually (representing 24.4% of electricity consumption at the time),¹²⁶ but, in 2020, all installed solar – ground-mounted and rooftop – only made up 5% of the EU's electricity generation.¹²⁷ And this is far from the only potential available in built-up areas, if we consider old mining and industrial sites, car parks, motorway margins and so on. It is these sites which offer the quickest potential for a renewables ramp-up.

A second reason why the current situation is far from optimal is because there are already far too many cases where member states do not properly apply the EU's environmental legislation and make it far too easy to build damaging installations in protected areas, such as Natura 2000. EU infringement cases

on nature- and water-related issues are numerous but represent only the tip of the iceberg.¹²⁸ As noted above, the state of the EU's habitats, species and water bodies suggests that the derogations in the Habitats, Birds and Water Framework Directives are being vastly overused. In addition, our experience suggests that, in central and eastern member states, such as Croatia and Bulgaria, project developers do not usually even request derogations, but rather deny that the damage will be significant in the first place – and this is often accepted by the authorities. As a result, it is already too easy in some countries to build in Natura 2000 areas, which should be a last resort.

Some articles of Council Regulation 2022/2577 do act to promote small-scale solar and heat pumps, which have massive potential and low environmental impacts at the point of installation. Yet, Article 3 prioritises boosting the *most damaging* renewable energy projects in the *most sensitive* natural areas. And, as mentioned above, many lower-hanging fruits are still not being picked. A further example is the fact that the EU solar strategy does not plan to require the installation of solar photovoltaics on new buildings in the EU until 2029.¹²⁹

These issues, together with the facts that the fitness checks mentioned above found the EU Nature and Water Directives fit for purpose, as well as the lack of alternative assessments mentioned below, make it hard to escape the impression that the decision to further undermine the EU's biodiversity protection for the sake of renewable energy development was an opportunistic one, not based on a thorough analysis or on a hierarchy of using lower-impact sites first. Certainly, individual project developers might have a strong motivation to trade-off biodiversity in order for their particular project to go ahead, but at the EU level no evidence exists that renewable energy and climate targets cannot be met without damaging valuable biodiversity areas.

5.1 ALTERNATIVE POLICY OPTIONS

WHAT POLICY OPTIONS EXIST?

As shown by the *RES simplify* and *Barriers and best practices* studies, a variety of factors, including support schemes, administrative capacity, digitalisation of

5. TRADE-OFFS

permits, improved spatial planning, improved public participation and communication, and clarity of procedures are of crucial importance for ensuring that sustainable forms of renewable energy continue to flourish. These require decisions in the legal, institutional, financial, communication and technological fields, but also cross-cutting approaches in areas like public participation and planning. Table 2 provides an overview of the studies' main recommendations and which ones have been tackled so far.

In fact, the range of options available is even wider, as some options are not included in these studies' main recommendations. For example, neither of them specifically prioritises speeding up legislation to make solar photovoltaic and hot water installations mandatory for new buildings or making it mandatory for member states to introduce training schemes for solar or heat pump installers. Nor do they specifically examine the affordability of solar power and heat pumps for households, small businesses and energy communities in order to propose additional incentives.

Options to promote multiple uses of space are slowly gaining visibility but were also not a major focus of these studies. Some countries (see, for example, the Slovenia case study in Section 4) still have legal barriers to, for example, using old landfills or open-cast mines for solar installation, or combining agricultural and energy use with agri-voltaics. Numerous options exist for installing photovoltaics on motorway or railway noise barriers, or above car parks, but, in most countries, these have remained options, rather than obligations. France is a notable exception, with legislation entering into force in April 2023 requiring car parks of over 80 vehicles to be at least 50% covered in solar photovoltaics within five years.¹³⁰

More policy alternatives emerge if we take a spatial and time-phased approach, which can rapidly pick some lower-hanging fruits, while taking time to resolve more complicated issues. In practice, this means concentrating on the left-hand side of the continuum in Figure 3, where projects are smaller but more numerous and the locations less controversial. Parallel initiatives need to take place at the same time to advance larger projects, while recognising that, whatever the improvements, these will still take some time.

For example, proactively carrying out sensitivity mapping of different areas and deciding on their suitability for different renewable technologies helps to speed up

later EIAs, as it ensures easier and earlier availability of data, as well as indicating to developers where they should prioritise their efforts. But due to the need for all-season biodiversity research, there is no escaping the fact that this takes time, so quicker initiatives promoting small-scale solar and heat pumps – which do not need environmental assessments, in most cases – need to be taken in parallel.

As explained below, this resembles the model currently being promoted by the EU in Council Regulation 2022/2577 and the REPowerEU update of the Renewable Energy Directive, but with some important differences.

In addition to the above, as the *Barriers and best practices* study shows, each EU member state has its own set of barriers that cannot all be picked up by the main recommendations. These offer another set of policy opportunities. As mentioned above, the EU has already identified country-specific policy reforms that it has pushed forward in exchange for RRF funding, such as the repeal of Poland's 10H legislation, but these surely form the tip of a very large iceberg that entails significant potential for tailor-made plans for each country.

WHICH POLICY ALTERNATIVES HAVE BEEN TACKLED SO FAR?

In this section, we first provide an overview of the proposals made by the *RES simplify* and *Barriers and best practices* studies and a brief assessment of which ones have been taken into account in the 2018 Renewable Energy Directive, Council Regulation 2022/2577 and the REPowerEU update of the Renewable Energy Directive. We then touch on the other policy options mentioned above to briefly examine the extent to which they have been integrated into EU policy changes.

As for the studies, given their different scopes, their recommendations do not completely overlap. But they coincide in several areas, as shown in the first four rows of Table 2. The recommendations shown in green are the ones that have been addressed by successive versions of the Renewable Energy Directive or Council Regulation 2022/2577, those in orange have been addressed to a lesser extent and those in red have either not been tackled or have been treated in a way that is counterproductive to the goal of speeding up sustainable renewable energy deployment.

TABLE 2. Comparison of recommendations from existing studies.

RES SIMPLIFY ¹³¹	BARRIERS AND BEST PRACTICES ¹³²
Institutional/communication: Clear administrative communication, roles and processes, including the use of e-communication and one-stop shops	Institutional/communication: More centralised, one-stop-shop planning
Public participation: Participation and acceptance measures, including enhancing public participation, early engagement, local financial participation in projects, independent facilitation and conflict-resolution mechanisms	Public participation: Involvement of local communities, authorities and nature conservation organisations upfront to increase acceptance and avoid long appeal procedures
Legal: Eased procedures for self-supply and small-scale plants; eased procedures for repowering of existing plants*	Legal: Streamlined and transparent administrative procedures with clear deadlines (consultation periods, EIAs etc.)
Institutional: Ensuring that the authorities are fit for purpose	Institutional: Adequate resources to process permit procedures; an adequate number of skilled personnel
Legal/planning: Clarified priority for renewables in administrative processes, including political backing for renewables – amongst others, in local and regional planning, defining renewables as a public interest**	Legal/planning/public participation: A comprehensive strategic approach on future energy infrastructure, including grid planning and connection procedures, coordinated between transmission and distribution grid operators, as well as local communities and nature conservation organisations
Communication: Guidelines and best practice by the EU and national governments	Technological/legal/institutional: State-of-the-art digital infrastructure for permits
Institutional: A monitoring mechanism on barriers	Policy/legal: Binding national 2030 renewable energy targets
Research/communication: Central provision of environmental and spatial information, via an independent platform, online GIS database and maps	Legal/financial: Reliable and predictable support schemes

* The problematic cases in the study were those where national-level application was stricter than EU law, so they would not require a change in legislation at the EU level, only at national level.

** This recommendation is not backed up by the study content, which finds only that unclarity on overriding public interest has been an issue for hydropower – but only suggests clarification, not changing the rules, and not for all technologies.

Legend: green = policy options tackled by recent EU renewables legislation;
orange = policy options partly tackled; red = policy options not tackled or tackled counterproductively

5. TRADE-OFFS

As mentioned above, the 2018 Renewable Energy Directive requires the establishment of one-stop shops, as well as reliable and predictable support schemes, and sets an overall deadline of two years for permit processes, thus addressing the first and last recommendations in Table 2. It also requires documents for permit processes to be able to be submitted electronically, without requiring state-of-the-art infrastructure for this purpose. These provisions have also been slightly updated in the new version of the directive.

The Council Regulation and new Renewable Energy Directive ease procedures for self-supply and small-scale plants, while the latter also requires adequate staff resources to be dedicated to handling permit processes – but it has yet to be seen whether member states will really do this and how "adequate" will be measured.

The updated Renewable Energy Directive also attempts to build a more strategic approach to energy infrastructure in spatial terms as well. It builds on the idea that better spatial planning is needed, that sensitivity mapping should be carried out to assess which sites are appropriate for which technology and that already built-up areas are preferable sites for the acceleration of renewable energy development, as shown above. It also – to some extent – embodies a phased approach, in which the most favourable areas for renewables development are designated by member states in order to pick the lowest-hanging fruits.

However, the approach has four flaws.

Firstly, it purports to focus on areas with low environmental sensitivity, but the unwarranted inclusion of the provisions on overriding public interest also makes it easier for developers to build in the areas with the highest environmental sensitivity – Natura 2000 areas – as discussed above.

Secondly, carrying out sensitivity mapping and designating acceleration areas are desirable, and would help to speed up renewables by saving time at the field research and spatial planning stages. But pairing these with an exemption for projects in such areas from carrying out EIAs, and therefore, also project-level public consultations is a step too far, which breaches the Aarhus Convention and is likely to attract legal challenges.

Thirdly, in an attempt to speed up permitting procedures, the Council Regulation and new Renewable Energy Directive introduce new provisions on repowering.

The former limits permit provisions to six months by or of itself, while the latter limits it to six months inside acceleration areas and one year outside. This is no problem for plants with repowering and potential expansion that require no EIA, but for a permit process that requires an EIA, it is not realistic to do a good quality assessment as well as all other permit steps within such a period.

Fourthly, the Council Regulation and new Renewable Energy Directive include specific provisions for very small renewable projects, but on environmental derogations for larger plants, they do not distinguish between solar, wind, geothermal, forest biomass, biogas, hydropower or any other technology. While any large plant in a sensitive location must always be subject to an EIA, it is particularly inexcusable that the blanket exemption from EIAs in acceleration areas includes forms of renewable energy that always have significant impacts, such as hydropower and forest biomass.

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The new Renewable Energy Directive's intention to ensure that key debates on renewables siting take place at the stage of planning renewables acceleration areas is a well-intentioned one, but it cannot replace the need for detailed project-level environmental assessments and public consultations.

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Therefore, despite public participation improvements featuring as a recommendation in both studies, not only have the EU's latest moves not addressed this, but they have made the situation worse than before the Council Regulation entered force. The new Renewable Energy Directive's intention to ensure that key debates on renewables siting take place at the stage of planning renewables acceleration areas is a well-intentioned one, and corresponds to the Aarhus Convention requirement of including the public at an early stage, when all options are open. However, this was already obligatory under the SEA Directive and cannot replace the need for detailed project-level environmental assessments and public consultations in cases where a project's impact may be significant.

Several remaining recommendations from the studies cited above appear not to have been tackled, so far, at all at the EU level. No systematic way of tracking barriers appears to be in place; 2030 targets are binding only at the EU level, not the national level, and it is not clear how environmental and spatial data or guidelines and best practices will be promoted.

In addition, alternatives such as applying the acceleration areas concept, but without the derogations from existing environmental law, were not properly assessed, nor was the need for limitations to such deregulations for particularly harmful technologies. Neither the REPowerEU update of the Renewable Energy Directive and Council Regulation 2022/2577 were subject to impact assessments;¹³³ this was claimed to be due to their urgent nature.

However, this argument would be more convincing if no less onerous options were available, such as introducing the provisions on small-scale solar and heat pumps from the Council Regulation without the accompanying environmental deregulation elements. Moreover, the use of Article 122 of the Treaty on the Functioning of the EU to change environmental legislation has also been subject to a legal challenge, as the provision was not designed for such purposes.¹³⁴

Even without an impact assessment, it is clear that the Council Regulation and new Renewable Energy Directive were not closely based on the available evidence. For example, neither of the above studies propose exempting renewable energy projects in designated renewable areas from EIA processes, nor exempting renewable energy projects from EIA processes in other circumstances. In fact, the *RES simplify* study finds that:

Also, there is a broad consensus among project developers that a balance with environmental goods in general is necessary, as is the need for EIAs in particular. In fact, project developers are often rather concerned about specific details linked to EIAs, for example that EIAs diverge from member state to member state or that data from these are not available in publicly available repositories.¹³⁵

In other words, even project developers agree that EIAs are necessary, even if the rules need to be refined in some countries. In the case of geothermal energy, the *RES simplify* study even calls for increased guidelines for EIA, harmonising national-level guidelines and further standardising the permitting process.¹³⁶ Not only are the authors *not* calling for the elimination of the EIA process, but they are rather calling for more regulation on it.

Given the above, it is unclear what the evidence base is for allowing renewable energy projects to be exempted from carrying out an EIA if they are located in an area designated for renewables, as long as the plan or programme designating the area has been subject to an SEA. Alternative courses of action, which would involve simply examining how to improve national application of the existing EIA Directive, do not appear to have been examined at all as part of the Commission's efforts to speed up renewables permit procedures.

Similarly with the "overriding public interest" clause, no public evidence is available stating how many renewable energy projects have failed – or how many developers have moved to other markets – because of inability to obtain derogations under the Nature and Water Framework Directives, nor why a presumption of overriding public interest would be justified, either in terms of the volume of renewable energy projects it will speed up or in terms of its impact on achieving environmental targets. Member states are not obliged to report on the application of Articles 6.3 and 6.4 of the Habitats Directive, Article 9 of the Birds Directive or Article 4(7) of the WFD by or of itself, so it is difficult to locate precise data on the extent to which the overriding public interest clauses in these directives inhibit the development of renewable energy in the EU.¹³⁷

However, it is logical that projects which require such derogations are a small minority of renewable energy projects, which have been established as having a significant impact on protected habitats and species or deteriorate water status, and therefore, need derogations. Moreover, many examples exist in which

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renewable energy projects have indeed been established as being of overriding public interest and have been able to go ahead as a result. So, those few which now require a boost to help them obtain derogations should be the very lowest priority projects, because they are the most damaging, and there is massive potential for much lower impact projects, which have not yet been exploited. Given the actual state of the EU's habitats and water bodies cited above, there should have been a strong incentive to analyse alternative means of generating electricity and/or saving energy.



Portraying environmental legislation as the main obstacle to acceleration of renewables is a highly partial position that does not correspond to the available evidence and has not resulted from an assessment of alternative courses of action.



Overall, portraying environmental legislation as the main obstacle to acceleration of renewables is a highly partial position that does not correspond to the available evidence and has not resulted from an assessment of alternative courses of action. It also sets a dangerous precedent for other economic sectors in the EU and undermines initiatives such as the EU Restoration Law, which only make sense if we work to preserve what we already have, as well as restoring what we have lost.

Moving beyond the studies to the other policy alternatives mentioned above, several of them were touched upon by the EU solar strategy, also part of the REPowerEU initiative.¹³⁸ Amongst others, the strategy points out that, if the installation of solar panels on highway sound barriers in a pilot project in the Netherlands were to be replicated over the country's whole system of sound barriers, it would yield enough electricity for 250,000 households.¹³⁹

The acceleration areas in the new Renewable Energy Directive should also prioritise – amongst others – artificial and built surfaces, including rooftops and facades of buildings; transport infrastructure; parking areas; farms; waste sites; industrial sites; mines and, where appropriate, urban waste water treatment sites.

But what is striking about the solar strategy is that many of its proposals have not yet made it into binding legislation, despite being much lower risk than the above provisions that have. It is far from clear why the EU cannot make it obligatory to install rooftop solar on all new residential buildings before 2029 or all new public and commercial buildings with useful floor area larger than 250 square metres by 2026, as foreseen by the strategy. Moreover, installing solar on highway barriers or car parks is presented in the document as a mere idea. It is to be hoped that member states will indeed take these up when designing their acceleration areas, but, if there is an emergency, it is these measures which could have been made obligatory – subject to technical limitations, of course – with much less risk than rolling back environmental protection.

5.2 PRIORITISING ALTERNATIVE POLICY AND PROJECT OPTIONS

Given the strong growth of solar and wind in 2022, as well as the options presented in the studies above and the EU's solar strategy, it is clear that environmental deregulation was not the only way to accelerate renewables.

Rather than undermining EU environmental legislation, the results of the studies, as well as other analyses carried out at the national level, could and should have been used to create tailor-made action plans for each country, such as the one carried out by Croatia as part of its recovery plan reforms.

The targeted use of reforms in order for countries to access recovery funds, as in the case of Poland's 10H rule, presented useful leverage for the EU in areas like spatial planning, where it does not have direct competence, but there is a clear need to act in order to meet EU objectives. Although the RRF was in many ways a unique facility, it makes sense to get the most out of such funds by insisting that they be accompanied by reforms needed to achieve the EU's objectives.

Defining acceleration areas makes sense, following the continuum portrayed above, in which built-up areas are clearly prioritised for policy and financial incentives, rather than considering all sources in all areas to be equally valid and worthy of support. Those options that can be developed quickly should be, and it appears to be a great missed opportunity that many aspects of the EU solar strategy were not directly included in the new Renewable Energy Directive. Other areas, outside of built-up areas, can be added to such acceleration area plans later, once proper sensitivity mapping has been done, and the data from the mapping should be publicly available, so developers can understand what awaits them and use it for EIA screening processes.

A mundane alternative policy option to increasing the number of environmental derogations, but one that is nevertheless needed, is that the European Commission needs to better monitor the implementation of existing EU legislation – including derogations – open infringement cases in a timely manner when it is not implemented, and assist member states to apply such procedures in a manner that properly balances public participation and renewable energy development.

Public participation is, after all, one of the main areas requiring improvement, according to the *RES simplify* and *Barriers and best practices* studies – and this is confirmed by Bankwatch's experience in practice. It is also key to ensuring that project alternatives are properly considered. Project promoters, with their limited capacity and portfolio, will almost always insist that no alternative technologies or locations are possible, and authorities responsible for permits very rarely have the capacity or will to challenge this view. Thus, it is left to the public to act as a watchdog and ensure that all options are duly taken into account.

5.3 CAN AN ENTIRE SECTOR BE OF OVERRIDING PUBLIC INTEREST?

Overriding public interest, as explained above, is a specific concept rooted in the Habitats, Birds and Water Framework Directives, which allows damaging projects to go ahead under certain circumstances, provided – amongst other criteria – that there are no suitable alternatives.

As mentioned above, the European Commission's fitness checks for the Birds and Habitats Directives and

the WFDs in 2016 and 2019 found these directives fit for purpose, so it is not clear why their derogation provisions started to be considered excessively burdensome in the meantime.

As discussed above, no evidence is available suggesting that these directives significantly inhibit the development of renewable energy, because they relate only to those sites where the most damage would be done. But there is abundant evidence that the EU's habitats and water bodies are not in the condition that they should be after so many years of these directives being in place. This raises questions about the extent to which excessive use of derogations inhibits the achievement of the goals of these directives.

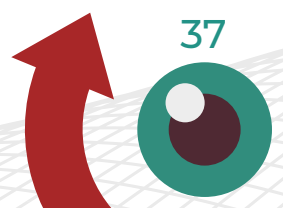
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There is abundant evidence that the EU's habitats and water bodies are not in the condition that they should be after so many years of these directives being in place.

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The whole point of these derogation clauses is that they should be exceptions, not the norm. And we have already seen above that the exemptions foreseen in Article 4 of the WFD currently cover around half of Europe's water bodies¹⁴⁰ (not only for hydropower, but for all purposes). This is the core of the problem with Council Regulation 2022/2577's presumption that all renewables are of overriding public interest and that they serve public health and safety for the purposes of the derogation assessments under these directives: it makes the exception the rule.

To remain meaningful, assessments of overriding public interest must by their nature be considered case by case. They need to balance competing interests that cannot possibly be the same for different projects using different technologies, at different sites, with different impacts or with different installed capacities.



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Apart from the practical problems of implementing this provision due to its clash with existing environmental law and its lack of clarity, the "presumption" does purport to maintain a case-by-case analysis, but is intended to stack the assessment in favour of the project going ahead, which defeats the purpose of the process.

It also calls into question whether appropriate assessments or assessments under Article 4(7) of the WFD will be able to guarantee the public's right to "early public participation, when all options are open and effective public participation can take place", as required by Article 6 of the Aarhus Convention. If the appropriate assessment or Article 4(7) assessment are stacked towards the project going ahead from the outset, public participation can in no way be said to be meaningful.

Moreover, presuming that entire sectors are of overriding public interest and serving public health and safety opens an even more unacceptable Pandora's box. This can be seen in Germany, where, in early 2023, disputes occurred between the Greens and the *Freie Demokratische Partei* due to the latter insisting that, if renewable energy and power grids were considered to be of overriding public interest, then building new roads should be as well.¹⁴¹

5.4 HOW SHOULD THE NEED FOR TRADE-OFFS BE ASSESSED?

Taking into account the above, it should be largely possible to accelerate renewables development without compromising the achievement of the EU's nature and water protection objectives. However, debates about trade-offs will always occur for certain locations. Here, we examine how to approach such cases, starting by stating several background assumptions:

- A speedy ramp-up of renewables is crucially needed, as is better protection and restoration of biodiversity.
- Not every site is suitable for all renewable technologies. The goal is to plan a sufficient amount of renewables in appropriate locations – not to approve everything, everywhere.
- Needless delays must be eliminated, but some aspects of project preparation simply do take time and cannot be shortened or bypassed, such as field research.

- Public participation is a must – not only to comply with the Aarhus Convention, but also to ensure acceptance and preferably participation in renewables projects.

Debates about trade-offs should not start at the project level, but rather during the process of developing energy strategies or plans, spatial plans, river basin management plans or acceleration area plans. All such plans should be subject to SEAs and public consultations, and if they may have significant impacts on Natura 2000 sites as well, an appropriate assessment must be part of the SEA.

The results of the SEA merely have to be "taken into account" when approving the plan or programme, but the appropriate assessment should be decisive in deciding whether certain projects in the plan can go ahead and, if so, under what conditions, as described in Section 3. If a plan or project will have a significant impact on a Natura 2000 site or may deteriorate or prevent improvement of a water body's status, if a suitable alternative is available, it must not go ahead.

Unfortunately, the effectiveness of the SEA process is often affected by factors such as lack of political will to truly take public opinion into account, or starting the process only after decisions have essentially been taken on a political level.¹⁴² Moreover, due to its broad scope, it often does not contain sufficiently detailed information to weigh up the full implications of the plans. For these reasons, project-level assessments and consultations via the EIA process remain crucial.

Where needed, the EIA process also includes the appropriate assessment process under the Habitats and Birds Directives, and/or the Article 4(7) assessment under the WFD, as described in Section 3, which all have their own specific criteria for assessing the need for trade-offs. But they all have similar provisions stating that, if a project will significantly impact the Natura 2000 site and/or deteriorate or prevent improvement of a water body's status, it cannot go ahead if there are suitable alternatives.

Of course, this gives rise to debates about which alternatives are feasible, but this is inevitable, as every project is different – and this is the whole point of the study and the public consultation: to lay out and debate the evidence. A smaller project is harder to justify as being of overriding public interest than a large one because it contributes less to the overall energy

supply and is easier to substitute with another project, but a larger one is likely to do more damage – at least individually, though not necessarily cumulatively.

Overall, no better solution appears to have been found so far to weigh up trade-offs than the approach taken by the EU's nature and water legislation, even if it needs to be better enforced to prevent excessive use of derogations.

In the context of the EU's recovery and the REPowerEU initiative, however, these compromises should be avoided completely, as the whole point of these initiatives is to speed up the EU's energy transformation. To achieve this, member states need to prioritise no-regret options that can be implemented without complex debates and legal challenges, and which respect biodiversity as well as the climate.

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6. CONCLUSIONS AND RECOMMENDATIONS

The EU's increased efforts to accelerate renewable energy development in its recovery and REPowerEU package are crucial, but its success in tackling the climate emergency also depends on preserving and restoring ecosystems, on which we depend for our food, water, climate regulation, medicines and much else besides. As the European Green Deal recognised, trade-offs between nature and climate must therefore be avoided as much as possible.

As part of the recovery process, several central and eastern EU member states are trying to unblock the development of renewable energy, with varying degrees of success. But the moves they propose – sometimes within their recovery plans – are often vague, and some, such as wind farms in forests and hydropower plants impacting Natura 2000 sites, have the potential to be highly biodiversity damaging.

The fact that member states propose certain measures in their recovery plans and REPowerEU chapters does not mean they will automatically be accepted by the European Commission, but the EU's new legislation aimed at speeding up renewables permitting – Council Regulation 2022/2577 and the updated Renewable Energy Directive, the text of which was agreed on in March this year – causes additional confusion about what is allowed or not.



The new legislation clashes with existing environmental law and is likely to prove counterproductive in practice, as it erodes public participation requirements and may provoke more public resistance to renewable energy projects.



The new legislation clashes with existing environmental law and is likely to prove counterproductive in practice, as it erodes public participation requirements and may provoke more public resistance to renewable energy

projects. Moreover, it appears to have been introduced without clear justification compared to numerous other policy options put forward by recent studies on breaking down barriers for renewable energy development.

The EU's existing Habitats, Birds and Water Framework Directives can and must be better applied at the national level, but have been found by the Commission to be fit for purpose. Similarly, the EIA procedure has proven its worth and must be refined and improved, not circumvented.

With regard to EU funds – particularly those whose rules are still to be set, the European Commission needs to ensure that the biodiversity component of the Green Deal is given adequate attention, and that governments are required to publish clearer draft plans for public consultation. Adequate, dedicated funds for nature protection and restoration are needed – these goals cannot be expected to compete with other activities for the same pot of money.

But safeguards against biodiversity destruction must also be strengthened. Allowing member states to plan vaguely-defined 'measures' instead of specific projects makes it extremely difficult to assess whether they have the potential to cause damage to nature or not, and inhibits informed public debate. This has to be changed in future funding streams.

6.1 POLICY RECOMMENDATIONS

The European Commission and member states need to:

- take a phased approach to renewables acceleration, putting the emphasis on rapid installation in built-up areas, while completing sensitivity mapping for other sites;
- prioritise decentralised solar and heat pumps for rapid expansion, as a key part of the recovery, while working to remove unnecessary barriers for other sustainable renewables;
- more aggressively promote the solar strategy, including through legislative initiatives to increase solar on existing infrastructure and ramping up initiatives to train installers for solar systems;
- ensure appropriate administrative staff in authorities responsible for permits;

- improve early public participation on major renewables projects via more meaningful public consultations on strategic environmental assessments and experience exchanged on best practices;
- translate the remaining recommendations from the *RES simplify* and *Barriers and best practices* into practice, for example, by setting up an EU mechanism to monitor barriers to renewables and provide guidance on best practice, as well as initiatives to improve dissemination of environmental and spatial data within member states;
- ensure that recovery funds are not used for hydro-power, forest biomass or other projects impacting Natura 2000 areas; and
- review Articles 3, 5 and 6 of Council Regulation 2022/2577, and the corresponding provisions of the updated Renewable Energy Directive, in light of their clashes with EU law and lack of evidence base for their adoption.

The European Commission needs to:

- avoid overly rushed decision-making and take into account the results of recent legislative changes before proposing new ones;
- ensure that member states are required to clearly state in their planning and programming documents exactly which infrastructure projects they will fund with EU funds and to complete strategic environmental assessments on plans that may have a significant environmental impact;
- increase evidence gathering and knowledge exchange on the use of the EIA Directive to encourage greater harmonisation across countries;
- collect evidence on the use of derogations under the Habitats, Birds and Water Framework Directives and present evidence on the extent to which these directives have hindered renewable energy development across the EU, together with an assessment of whether energy savings and alternative renewable energy projects would be able to bridge the gap; and
- enforce EU environmental law in a more systematic and timely manner to minimise conflicts between renewable and biodiversity caused by lack of legislation implementation.

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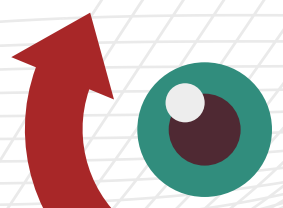
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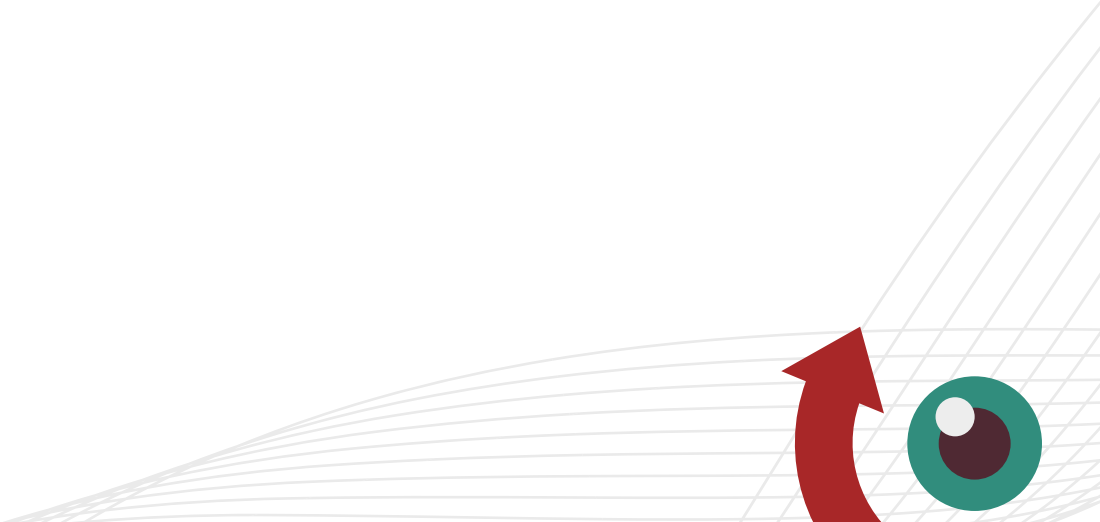
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The CEE Bankwatch Network gathers 16 member groups in 14 countries in central and eastern Europe, the Caucasus and Russia into the largest network of grassroots, environmental and human rights groups in central and eastern Europe. CEE Bankwatch has its headquarters in Prague, Czechia, but their staff is based in offices across the region and in Brussels.



**RECOVERY
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Biodiversity in the EU is in a parlous state, with 81% of EU habitats in poor or bad condition, and global heating records are constantly being broken. Yet humans cannot live without either a stable climate or biodiversity.

This policy study examines recent changes in EU renewable energy rules, aimed at a much-needed acceleration in renewable energy deployment. The principal idea behind these new rules is sound: by better mapping environmentally sensitive locations and establishing 'acceleration areas' in places where impacts are expected to be low, the development of renewable energy and biodiversity protection can go hand-in-hand, and potential conflicts can be avoided at an early stage.

However, the inclusion of derogations from the EU's long-established and nuanced environmental legislation brings high risks, both in terms of pushing forward specific biodiversity-damaging projects and as a possible precedent for other sectors.

In addition, the study shows how selected central and eastern EU Member States plan to use recovery funds to speed up renewable energy. A range of policy options exists to speed up renewables without derogating from EU environmental or public participation provisions. Biodiversity and climate emergencies must be tackled together, and trade-offs between renewable energy and biodiversity can and must be reduced to an absolute minimum.

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