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L&L ENERGY TEAM

The EU's Fit for 55 Package

The Revision of the Renewable Energy Directive

Leuven, 9 March 2023 – Thomas Chellingsworth & Christine Delagaye

Agenda

1. Proposal for a Directive amending RED II - Status
2. Targets and sub-targets
3. Geographic allocation
4. Planning, permit granting and assessment processes
 1. Proposal for a Directive amending RED II
 2. “Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy”

- **Timeline**
 - Proposal of the European Commission, COM(2021)557 final: 14 July 2021
 - General approach of the Council of the European Union: 24 juni 2022
 - Amendments of the European Parliament: 14 September 2022
 - Trialogue

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Renewable Energy Directive 2009	<ul style="list-style-type: none"> • Share of energy from renewable sources in the Union's gross final consumption • Aandeel energie uit hernieuwbare bronnen in vervoer 	<ul style="list-style-type: none"> • BE: 13% in 2020 (binding) • 10% in 2020 (binding)
Renewable Energy Directive 2018	<ul style="list-style-type: none"> • Share of energy from renewable sources in the Union's gross final consumption • National targets from Directive 2009/28 are kept as baseline • Increase share of renewable energy in heating and cooling sector • Increase share of energy from renewable sources and waste heat and cold in district heating and cooling • Share of renewable energy within final consumption of energy in the transport sector 	<ul style="list-style-type: none"> • EU: 32% in 2030 • BE: 13% • 1.3% annual average (endeavour to) • 1% annual average (endeavour to – alternative: form of TPA) • 14% by 2030 (obligation on fuel suppliers)

About targets and sub-targets (2)

Proposal		
General target	Share of energy from renewable sources in the Union's gross final consumption	Commission and Council: 40% European Parliament: 45% in 2030
	National targets from Directive 2009/28 are kept as baseline	BE: 13%
Industry	Increase share of renewable sources in the amount of energy sources used for final energy and non-energy purposes in the industry sector	Commission: 1.1 % annual average by 2030 (endeavour to) Council: 1.1 % annual average for 2021-2025 and 2026-2030 (endeavour to) Parliament: 1.9% average for 3-year periods (2024-2027 and 2027-2030) (endeavour to)
	Contribution of renewable fuels of non-biological origin used for final energy and non-energy purposes as % of the hydrogen used for final energy and non-energy purposes in industry	Commission: 50% by 2030 Council: 35% by 2030, 50% by 2035 Parliament: 50% by 2030, 70% by 2035

Proposal		
Heating and cooling sector	Increase share of renewable energy in heating and cooling sector (annual average)	<p>Commission: 1.1% annual average for 2021-2025 and 2026-2030 (binding)</p> <ul style="list-style-type: none">- 1.5% if waste heat and cold is used, up to a maximum of 40% of the average annual increase <p>Council: 0.8% annual average for 2021-2025, 1.1% for 2026-2030 (binding)</p> <ul style="list-style-type: none">- waste heat and cold may count up to max. 0.4%; average annual increase to be increased by ½ of waste heat and cold % to max. 1% for 2021-2025 and 1.3% for 2026-2030;- renewable electricity used by means of heat pumps may count up to max. 0.4%; average annual increase to be increased by ½ of the % of renewable electricity used by means of heat pumps up to max. 1% for 2021-2025 and 1.3% for 2026-2030 <p>Parliament: 2.3% (indicative)</p> <ul style="list-style-type: none">- 2.8% if waste heat and cold is used, up to a maximum of 40% of the average annual increase

About targets and sub-targets (4)

Proposal		
District heating and cooling	<p>Increase share of energy from renewable sources and from waste heat and cold in district heating and cooling</p> <p><i>Commission: MS with a share of > 60%: counted as fulfilling the increase.</i></p> <p><i>[Council: + MS with share >50% and ≤ 60%: counted as fulfilling half of the average annual increase]</i></p>	<p>Commission: 2.1% annual average 2021-2025, 2026-2030 (endeavour to)</p> <p>Council: 2.1% annual average 2021-2030 (endeavour to)</p> <p>Parliament: 2.3% annual average 2021-2025 en 2026-2030 (endeavour to)</p>
	<p>Limited form of “third party access”</p> <p>→ operators of district heating or cooling systems > 25 MWth</p>	<p>Commission: “obliged”</p> <p>Council: “obliged”</p> <p>Parliament: “encouraged”</p>

About targets and sub-targets (5)

Proposal		
Transport sector	Greenhouse gas intensity reduction	<p>Commission: 13% by 2030</p> <p>Council: by 2030:</p> <ul style="list-style-type: none"> (i) share of renewable energy within final energy consumption transport sector: 29%, or (ii) greenhouse gas intensity reduction: 13% <p>Parliament: 16 % by 2030</p>
	Share of advanced biofuels and biogas produced from feedstock listed in Part A of Annex IX	<p>Commission: 0.2% in 2022, 0.5% in 2025, 2.2% in 2030</p> <p>Council: 0.2% in 2022, 1% in 2025, 4.4% in 2030</p> <p>Parliament: 0.5% in 2025, 2.2% in 2030</p>
	Share of renewable fuels of non-biological origin	<p>Commission: 2.6% in 2030</p> <p>Council: 5.2% in 2030 (endeavour)</p> <p>Parliament: 2.6% in 2028, 5.7% in 2030</p>
	European Parliament: renewable fuels of non-biological origin and renewable hydrogen to be delivered to the hard to abate maritime mode (with derogation possibility)	European Parliament: 1.2% from 2030

About targets and sub-targets (6)

Proposal		
Building sector	<p>Indicative target for the share of renewables in final energy consumption in their buildings sector in 2030</p> <p>European Parliament:</p> <ul style="list-style-type: none">- renewables <u>and</u> waste heat and cold- produced on site or nearby including from the grid	<p>To be set by MS, consistent with an indicative target of 49% at EU level</p> <p>Council: waste heat and cold may count up to 20% → target must increase by half of the % used</p> <p>European Parliament: waste heat and cold may count up to 20% → target must increase by half of the % used to an upper limit of 54%</p>

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- Principle
 - Place of production of electricity and district heating and cooling
- Exceptions
 - Statistical transfers
 - Joint projects between Member States
 - Joint projects between Member States and third countries
 - Joint support schemes

- New in Proposal
 - Commission: By 31 December 2025, each MS shall agree to establish at least one joint project with one or more other Member States for the production of renewable energy
 - Council: By 31 December 2025, each MS shall endeavour to agree on establishing at least one joint project with one or more other Member States for the production of renewable energy
 - European Parliament:
 - “(a) by 31 December 2025, Member States with an annual electricity consumption of 100 TWh or less shall establish at least two joint projects [renewable energy production including offshore renewable hybrid assets];
 - (b) By 2030, Member States with an annual electricity consumption of more than 100 TWh shall establish a third joint project”.
 - Projects financed by national contributions under the “Union renewable energy financing mechanism” established by Commission Implementing Regulation (EU) 2020/1294 are taken into account

- New in Proposal:
 - Member States bordering a sea basin:
 - Commission: (...) shall cooperate to jointly define the amount of offshore renewable energy they plan to produce in that sea basin by 2050 (with intermediate steps [EP: and trajectories] in 2030 and 2040)

- European Parliament:

“Member States bordering a sea basin shall jointly define the adequate space for offshore renewable energy projects and allocate that space in their maritime spatial plans, (...)”.

→ (partial) joint maritime spatial planning

- Council: cooperate on goals for offshore renewable energy generation to be deployed within each sea basin by 2050, with intermediate steps in 2030 and 2040

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- Permit granting and appeal procedures
 - One of the main obstacles to renewable energy projects
 - Tension between climate and environmental policies
 - Limited provisions in RED II (Directive 2018/2001 - Renewable Energy Directive 2018)
 - Rules on authorisation must be proportionate
 - Maximum duration:
 - 2 years for power plants
 - 1 year if < 150 kW_e and for repowering
 - may be extended by up to one year
 - without prejudice to judicial appeals
 - No precedence over EU environmental law

- Two legislative initiatives
 - Proposal for a directive amending RED II
 - In trialogue – ordinary legislative procedure
 - Legal base: Article 194 (2) TFEU (Energy) (Article 114 TFEU)
 - Council Regulation 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy
 - Adopted by the Council on a proposal from the Commission – no Parliament involvement
 - Legal base: Article 122(1) TFEU (same as for Regulation 2022/1854 on an emergency intervention to address high energy prices)
 - “1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.”
 - “Emergency regulation” – applies for 18 months from 30 December 2022
 - Substance overlaps with Council’s position on proposal for a directive

- Proposal for a Directive:
 - European Parliament: modest additions
 - Council:
 - Provisions on substantive assessment of permit applications
 - Climate policy to some extent takes precedence over environmental policy

- Addition proposed by the Council:
- *“For the purposes of Article 6(4) and 16(1)(c) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Article 9(1)(a) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, Member States shall ensure that the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself and storage assets are presumed as being in the interest of public health and safety, and as being carried out for imperative reasons of overriding public interest, in the planning and permit-granting process when balancing legal interests in the individual cases. Member States may restrict the application of these provisions to certain parts of their territory as well as to certain types of technologies or to projects with certain technical characteristics in accordance with the priorities set in their national integrated energy and climate plans.”*

- Council Directive 92/43/EEC (“Habitats Directive”)
 - Designation of sites as special areas of conservation” (“Natura 2000”)
 - *“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, (...) shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public”.*
 - *“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted”.*

Council: Presumption that certain projects are carried out for imperative reasons of public interest

- Council Regulation 2022/2577:

- Article 3 (1)

“The planning, construction and operation of plants and installations for the production of energy from renewable sources, and their connection to the grid, the related grid itself and storage assets shall be presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual case, for the purposes of Article 6(4) and Article 16(1)(c) of Council Directive 92/43/EEC (5), Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council (6) and Article 9(1)(a) of Directive 2009/147/EC of the European Parliament and of the Council (7). Member States may restrict the application of those provisions to certain parts of their territory as well as to certain types of technologies or to projects with certain technical characteristics in accordance with the priorities set in their integrated national energy and climate plans.”

- Regulation → directly applicable
 - Time-limited → 18 months from 30 December 2022
 - Rebuttable presumption (preamble item 8)

- Addition proposed by the Council:

“In order to contribute to the achievement of climate neutrality, Member States shall ensure, at least for projects which are recognized as being of public interest, that in the planning and permit-granting process, the construction and operation of energy plants from renewable sources and the related grid infrastructure development is given priority when balancing legal interests in the individual case. 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 this purpose.”

- Council Regulation 2022/2577:
 - Article 3 (2)

“Member States shall ensure, at least for projects which are recognised as being of overriding public interest, that in the planning and permit-granting process, the construction and operation of plants and installations for the production of energy from renewable sources and the related grid infrastructure development are given priority when balancing legal interests in the individual case. 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.”

- Addition proposed by the Council:

“Member States shall ensure that in the planning and permit-granting process for the repowering of renewable energy plants, the assessment of impacts derived from such repowering is limited to the potential impacts resulting from the change or extension compared to the original project. Member States may exclude hydropower from this provision”

- Council Regulation 2022/2577:
 - Article 5 (3)

“Where the repowering of a renewable energy power plant, or the upgrade of a related grid infrastructure which is necessary to integrate renewables into the electricity system, is subject to a determination whether the project requires an environmental impact assessment procedure or an environmental impact assessment pursuant to Article 4 of Directive 2011/92/EU, such prior determination and/or environmental impact assessment shall be limited to the potential significant impacts stemming from the change or extension compared to the original project.”

- Council Regulation 2022/2577:
 - Accelerating permit-granting process
 - Solar energy equipment in artificial structures:
 - 3 months
 - exemption from environmental impact assessment
 - ≤ 50 kW: absence of reply within 1 month = permit deemed granted (if capacity \leq grid connection)
 - Repowering:
 - 6 months including environmental impact assessments
 - 3 months for grid connections (unless safety concerns or technical incompatibility)
 - Repowering of solar with no additional space used and compliant with mitigation measures: exemption from determination whether an environmental impact assessment is required
 - Heat pumps
 - < 50 MW : 1 month ; ground source heat pumps: 3 months

- Council Regulation 2022/2577: Accelerating permit-granting process
 - Article 6: Exemption from environmental impact assessment for certain projects if located in a dedicated renewable or grid area – if that area has been subjected to a strategic environmental impact assessment

“Member States may exempt renewable energy projects, as well as energy storage projects and electricity grid projects which are necessary to integrate renewable energy into the electricity system, from the environmental impact assessment under Article 2(1) of Directive 2011/92/EU and from the species protection assessments under Article 12(1) of Directive 92/43/EEC and under Article 5 of Directive 2009/147/EC, 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 in accordance with Directive 2001/42/EC of the European Parliament and of the Council (8). The competent authority shall ensure that, on the basis of existing data, appropriate and proportionate mitigation measures are applied in order to ensure compliance with Article 12(1) of Directive 92/43/EEC and Article 5 of Directive 2009/147/EC. Where those measures are not available, the competent authority shall ensure that the operator pays a monetary compensation for species protection programmes in order to secure or improve the conservation status of the species affected”.

Thank you for your attention!



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