Directive (EU) 2023/2413: the designation of 'renewables acceleration areas' in which projects are exempted from an environmental impact assessment

The new Renewable Energy Directive requires Member States to approve plans designating ' renewables acceleration areas'. The plans will be subject to strategic environmental assessment, but projects in these areas will be exempted from environmental impact assessment.

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Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 impinges on three EU legal acts and, as far as is relevant here, amends Directive (EU) 2018/2001 of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (the Renewable Energy Directive).

Directive (EU) 2023/2413 increases the overall Union target of energy from renewable sources in the Union's gross final consumption of energy to 42.5% by 2030 (in Spain, the recent September 2024 revision of the National Energy and Climate Plan 2023-2030 provides for a higher target of 48%), and also introduces provisions for the promotion of this energy and the simplification and shortening of the administrative permit-granting procedure.

To this end, among other things, Directive (EU) 2023/2413 reintroduces indefinitely two provisions already contained exceptionally and temporarily in Council Regulation (EU) 2022/2577 (with a validity of eighteen months from its entry into force, which expired on 30 August 2023), in order to accelerate the pace of deployment of renewable energy in the face of the crisis caused by the war against Ukraine.

A. The designation of renewables acceleration areas in which projects are exempted from an environmental impact assessment

Directive (EU) 2023/2413 regulates, in a harmonised and permanent way, what in Council Regulation (EU) 2022/2577 was a possibility granted to States to exempt renewable energy projects located in a 'dedicated renewable area', previously subject to a strategic environmental assessment, from the environmental impact assessment procedure. Spain did not avail itself of this possibility, but chose to introduce on a temporary basis the 'environmental effects determination procedure' for wind or solar photovoltaic power projects submitted before 31 December 2024 that met certain requirements.

The following are the most important aspects of Directive (EU) 2023/2413's regulation.

1. By 21 May 2025 (deadline for the transposition of Directive (EU) 2023/2413), Member States shall carry out "coordinated mapping" for the deployment of renewable energy and related infrastructure that identifies the land and sea areas that are required in order to meet at least their national contributions towards the overall Union renewable energy target for 2030. In defining these areas, Member States should take into consideration, in particular, the availability of energy from renewable sources and the potential offered for renewable energy production, the projected demand for energy, the availability of relevant energy infrastructure, and the environmental sensitivity in accordance with Annex III to the Environmental Impact Assessment Directive. In these areas, renewable energy uses shall be compatible with pre-existing uses (Art. 15b).

   In Spain we have, as a possible starting point, the 'environmental zoning for the implementation of wind and photovoltaic renewable energy', which is a tool available on the website of the Ministry for Ecological Transition and the Demographic Challenge that identifies the land areas with the greatest environmental conditions for the installation of these projects.

   However, as the Ministry specifies, this is a 'methodological approximation for guidance' that must be completed with the regulations of the spatial planning and land-use instruments approved by the devolved regions. Currently, the Environmental Assessment Act 21/2013 refers to this environmental zoning to prioritise the processing of renewable energy projects located in areas of low or moderate sensitivity (nineteenth additional provision, introduced by Royal Decree-law 6/2022),

2. By 21 February 2026, as a sub-set of the above areas, competent authorities of the Member States will have to adopt one or more plans that:

   a) Designate 'renewables acceleration areas' for one or more types of renewable energy sources. They should be strongly homogeneous land and sea areas where the deployment of renewable energy sources is not expected to have a significant environmental impact,

in view of their particularities and while:

— giving priority to, inter alia, industrial sites or degraded land not usable for agriculture;

— excluding, inter alia, Natura 2000 sites and areas designated under national protection schemes); and

In these areas, only a screening process will be applied to the applications

— using all appropriate tools and data to ensure that renewable energy plants will not have a significant environmental impact (including wildlife sensitivity maps and data on habitat types and species under the EU birds and habitats directives).

Directive (EU) 2023/2413 leaves the determination of the number and size of these areas to the discretion of the States, with the condition that they ensure that 'the combined size of those areas is significant' and that they contribute to the achievement of its objectives.

b) Establish appropriate rules on effective mitigation measures in order to avoid the adverse environmental impact that may arise or, where that is not possible, to significantly reduce it, on biodiversity, natural habitats or water, in order to comply with obligations under the Habitats Directive, the Birds Directive and the Water Framework Directive.

Before their adoption, the plans designating renewables acceleration areas shall be subject to an environmental assessment (with the specificities applicable to the strategic environmental assessment of Natura 2000 network areas if these sites are likely to be significantly impacted).

In Spain, it is likely that the designation of these renewables acceleration areas and their strategic environmental assessment will pose major difficulties due to the complex web of regional and local powers that affect an area with multiple affected interests.

3. The permit-granting procedure for renewable energy projects located in renewables acceleration areas and complying with the rules applicable to them:

a) Are exempted from the environmental impact assessment procedure.

Only a screening process will be applied to applications with the aim of identifying whether the

project is highly likely to give rise to significant unforeseen adverse effects which were not identified during the environmental assessment of the plans designating renewables acceleration areas:

— The project developer shall provide information on the characteristics of the renewable energy project, on its compliance with the rules and mitigation measures for the specific renewables acceleration area, and may be required to provide additional information.

Project applications will be deemed approved by positive silence

— The process – not open to responses - will be concluded within 45 days (or within 30 days for repowering of renewable energy power plants or installations with an electrical capacity of less than 150 kW).

— The competent authority may decide, setting out due reasons, that the project is highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographical area where the project is located that cannot be mitigated by the measures identified in the plans designating acceleration areas or proposed by the project developer, in which case the project shall be subject to an environmental impact assessment procedure (which shall be carried out within six months).

But even in these cases, States may (in the transposition law) exempt wind and solar photovoltaic projects from such impact assessments in justified circumstances, such as where needed to accelerate the deployment of renewable energy to achieve the climate and renewable energy targets; in such a case, the project developer should adopt proportionate mitigation measures or, if not available, compensatory measures (including monetary compensation), in order to address those significant unforeseen adverse effects identified during the screening process.

— In the event that the competent authority fails to take a decision within the maximum time limit, the positive silence (tacit approval) rule applies (the project will not be subject to an environmental impact assessment).

b) Shorter time limits in the permit-granting procedure: the dura-

tion of the procedure shall not exceed 12 months in land areas and two years in sea areas (which may be extended by up to six months in justified cases). These deadlines are further reduced for the granting of permits for repowering projects, for installations with an electrical capacity of less than 150 kW and for co-located energy storage assets, as well as their connection to the grid. It also provides for the application of the positive silence rule when the maximum time limit is exceeded in the intermediate steps (not in the final decision).

B. Presumption of overriding public interest for renewable energy projects

By 21 February 2024 and until climate neutrality is achieved, Member States shall ensure that, in the permit-granting procedure, the planning, construction and operation of renewable energy plants, the connection of such plants to the grid, the related grid itself, and storage assets are presumed as being 'in the overriding public interest and serving public health and safety' when balancing legal interests in individual cases for the purposes of applying the following environmental rules:

— The possibility of carrying out a plan or project despite the negative conclusions of the site impact assessment required by the Habitats Directive by adopting the necessary compensatory measures (Art. 6(4), transposed in our country by Art. 46 of the Natural Heritage and Biodiversity Act and by the Environmental Assessment Act).

— The possibility of establishing exceptions to certain measures for the protection of species and their habitats provided for in Directive (EU) 2023/2413 and in the Birds Directive for the benefit of public health and safety or for imperative reasons of overriding public interest (Art. 16(1)(c) of the Habitats Directive and Art. 9(1)(a) of the Birds Directive, transposed in Spain by Art. 61 of the Natural Heritage and Biodiversity Act).

— The consideration of the benefits for human and public health for the purposes of justifying, when certain conditions are met, modifications or alterations to bodies of water that affect the achievement of the objectives of the Water Framework Directive without this implying non-compliance by the Member State (Art. 4(7) of the Water Framework Directive).

The presumption of overriding public interest of renewable energy projects is limited to these cases without Directive (EU) 2023/2413 providing, as Regulation (EU) 2022/2567 did, for a general guarantee of the priority of these projects when weighing the legal interests at stake in the planning process and permit-granting procedure.

The deadline for States to guarantee this presumption of overriding public interest has already passed and in Spain it has not yet been transposed into basic national legislation. For the time being, only the region of Galicia has incorporated this overriding public interest of wind projects into the Tax and Administrative Measures Act 10/2023 on the basis of Directive (EU) 2023/2413,

but giving it a broader scope (Arts. 35 to 37).

Galician law thus establishes that the presumption of overriding public interest 'shall be taken into account in the environmental assessment procedures necessary to grant permission to projects, in such a way that priority is given to the construction and operation of wind farms and the development of their related infrastructure, except where there is evidence that such projects have significant adverse effects on the environment and the landscape that cannot be mitigated or compensated for'. Furthermore, the law provides that in the event that an administrative appeal is lodged against the permission granted to a wind farm project or its infrastructure and the suspension of the contested act is requested, this overriding interest will be taken into account in the balancing of interests (which seems to point more to the granting of interim relief in the contentious procedure, which is outside the scope of its jurisdiction).

Directive (EU) 2023/2413 narrows the presumption of overriding public interest of renewable energy

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