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Intra-environmental Conflicts in the Context of the Sustainable Energy Transition at the EU Level: Analyzing the Respective Legislative Developments (RED III Directive) and the Role of the Principles of EU Environmental Law

Konflikty wewnątrzśrodowiskowe w kontekście zrównoważonej transformacji energetycznej na poziomie Unii Europejskiej: analiza rozwoju ustawodawstwa (dyrektywa RED III) oraz roli zasad unijnego prawa ochrony środowiska

Abstract: The main research question which the article aims to address concerns whether the EU environmental principles can provide normative guidance for the resolution of intra-environmental conflicts. These conflicts arise from legal instruments, such as the Renewable Energy Directive (RED) III, that aim to promote the growth of projects for renewable energy sources as a critical means of promoting the sustainable energy transition. The first conclusion is that these conflicts are resolved in favor of climate-related interests and at the expense of other environmental interests in the context of the RED III Directive. A second conclusion is that the EU environmental principles are critical in limiting the prioritization of one category of environmental interests over others. Therefore, critical regulatory choices made in the RED III Directive do not comply with the criteria arising from the environmental principles.

Keywords: Intra-environmental conflicts, RED III Directive, EU Environmental Principles, Environmental Interests, Sustainable Energy Transition

Abstrakt: Główne pytanie badawcze, na które artykuł stara się odpowiedzieć, dotyczy tego, czy unijne zasady ochrony środowiska mogą dostarczać normatywnych wskazówek dla rozstrzygania konfliktów wewnątrzśrodowiskowych. Konflikty te wynikają z instrumentów prawnych, takich jak dyrektywa RED III, które zmierzają do promowania zwiększonego wdrażania projektów w zakresie odnawialnych źródeł energii jako kluczowego środka służącego wspieraniu zrównoważonej transformacji energetycznej. Pierwszy wniosek wskazuje, że konflikty te, w kontekście dyrektywy RED III, są rozstrzygane na rzecz interesów związanych z klimatem, kosztem innych interesów środowiskowych. Zgodnie z drugim wnioskiem unijne zasady ochrony środowiska mają kluczowe znaczenie dla wyznaczania granic uprzywilejowania jednej kategorii interesów środowiskowych względem innych interesów środowiskowych. W konsekwencji zasadnicze wybory regulacyjne dokonane w dyrektywie RED III nie spełniają kryteriów wynikających z zasad ochrony środowiska.

Słowa kluczowe: konflikty wewnątrzśrodowiskowe, dyrektywa RED III, unijne zasady ochrony środowiska, interesy środowiskowe, zrównoważona transformacja energetyczna

1. Introduction: Defining intra-environmental conflicts and the research question

The climate crisis poses fundamental challenges to the entire globe, such as water shortages, mass migration, catastrophic floods, and irreversible damage to ecosystems and biodiversity.[1] The climate crisis is also a part of a larger megatrend of environmental degradation linked to the overexploitation of natural resources and to rapid biodiversity loss.[2] The interdependencies be-

[1] *AR6 Climate Change 2023: Synthesis Report Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Intergovernmental Panel on Climate Change, Geneva 2023, p. 35–115, https://doi.org/10.59327/IPCC/AR6-978929169164/.

[2] S. Prakash, A. Neuville, *Biodiversity, Climate Change and Energy*, Publications Office of the European Union, Luxembourg 2024, p. 3, https://op.europa.eu/en/publication-detail/-/publication/323615ce-ea5c-11ee-bf53-01aa75ed71a1/language-en [access: 15.03.2025].

tween the environmental crisis of biodiversity loss and the climate crisis are thus recognized, because well-functioning ecosystems help mitigate climate change, whereas degraded ecosystems intensify climate change.[3]

A significant component of any effort to mitigate climate change and avoid its disruptive effects concerns the decarbonization of the energy sector, which is associated with fundamental changes in the way that energy is produced and consumed. These changes are described with the term "energy transition."[4] In this context, increasing the deployment of renewable energy constitutes an indispensable and fundamental component of the decarbonization agenda at the various levels of governance (international, regional, and national).[5] If poorly planned, however, greater use of renewable energy and the development of the necessary infrastructure may have negative consequences on the protection of species, the conservation of forests and nature conservation, and competing land uses.[6] Subsequently, the law plays a critical role in both steering the energy transition through the adoption of legally binding targets and instruments for achieving those targets and in providing directions for the regulation of the possible trade-offs in the respective processes.[7]

In the EU context, achieving the cross-cutting objective of climate neutrality – a central component of the European Green Deal[8] and a legally binding goal set out in the European Climate Law[9]- requires the rapid replacement of fossil fuels with renewable energy sources. It is also worth noting that the European

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[3] H.O. Pörtner, R.J. Scholes, A. Arneth, D.K.A. Barnes, M.T. Burrows, S.E. Diamond, C.M. Duarte, W. Kiessling, P. Leadley, S. Managi, P. McElwee, G. Midgley, H.T. Ngo, D. Obura, U. Pascual, M. Sankaran, Y.J. Shin, A.L. Val, *Overcoming the Coupled Climate and Biodiversity Crises and Their Societal Impacts*, "Science" 2023, vol. 380, no. 6642, p. 1–12, https://doi.org/10.1126/science.abl4881.

[4] *World Energy Transitions Outlook: 1.5C Pathway*, International Renewable Energy Agency, Abu Dhabi 2021; O. Hailes, J.E. Viñuales, *The Energy Transition at a Critical Juncture*, "Journal of International Economic Law" 2023, vol. 26, no. 4, p. 627 et seq.

[5] Ibidem, p. 17; S. Prakash, A. Neuville, *Biodiversity, Climate Change and Energy…*, p. 3.

[6] S. Prakash, A. Neuville, *Biodiversity, Climate Change and Energy…*, p. 3–4.

[7] K. Huhta, S. Romppanen, *Comparing Legal Disciplines as an Approach to Understanding the Role of Law in Decarbonizing Societies*, "Transnational Environmental Law" 2023, vol. 12, no. 3, p. 649–650; S. Romppanen, K. Huhta, *The Interface Between EU Climate and Energy Law*, "Maastricht Journal of European and Comparative Law" 2023, vol. 30, no. 1, p. 45.

[8] Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final; See also E. Chiti, *Managing the Ecological Transition of the EU: The European Green Deal as a Regulatory Process*, "Common Market Law Review" 2022, vol. 59, no. 1, p. 34.

[9] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law"), OJ L 243, 9.07.2021, p. 1–17.

Climate Law acknowledges the essential role of carbon sinks for achieving climate neutrality and therefore calls for the restoration of ecosystems in order to assist in the maintenance and enhancement of natural sinks, as well as the development of adaptation capacities and resilience and the minimization of climate impacts (Recitals No. 22 and 23, Article 5 (4) of Regulation 2021/1119).

Along with the environmental and climate considerations, the EU's energy transition has to a significant extent been initiated by Russia's invasion of Ukraine. The invasion caused a major disruption in energy supplies, so that the achievement of the objective of energy security, which is a central objective of the EU's energy law (Article 194 TFEU), became even more central and urgent in the EU Energy Agenda.[10] The so-called Emergency Regulation was the first legislative instrument adopted to address the effects of the energy crisis. The Regulation sets temporary rules to accelerate the permitting procedures for renewable energy projects and for grid and infrastructure projects that are necessary to integrate renewable energy into the electricity system.[11] Furthermore, the RED III Directive (Directive 2023/2413), which amended the RED II Directive (Directive 2018/2001), constitutes a key legal pillar for initiating the sustainable energy transition at the EU level.[12] A key characteristic of the RED III Directive is that it introduces significant regulatory features that aim to significantly accelerate the authorization procedures for deploying renewable energy infrastructure as a means of achieving decarbonization. This is affected in a manner that seems to prioritize renewable energy projects and the necessary infrastructure over the protection of other environmental interests or competing land uses.

Subsequently, conflicts arise from the collision of climate-related interests – which are associated with the sustainable energy transition and operate in a broader environmental protection context – with other environmental interests that mainly relate to protecting biodiversity or forests, water, and soil. These conflicts can also be characterized as intra-environmental conflicts and the current trend is that they are mainly resolved in favor of the climate-related

[10] Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, *REpower EU Action Plan*, COM/2022/230, p. 6.

[11] Council Regulation (EU) 2022/2257 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022, p. 36–44.

[12] Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, OJ L 2023/2413, 31.10.2023.

interests.[13] Similar conflicts may arise within the context of the Net-Zero Industry Act, which includes provisions that facilitate the manufacturing of net-zero technologies through fast-track permitting procedures in order to contribute to the decarbonization of industry.[14] It is also worth mentioning that the respective conflicts demonstrate the divergent values and objectives that underpin the three legal disciplines playing a critical role in the EU decarbonization agenda, namely the EU's energy law, climate law,[15] and environmental law.[16]

The aim of this paper is to examine whether the environmental principles – primarily those that are set in EU primary law and are horizontal in nature, such as the environmental integration principle – can provide normative guidance for resolving the intra-environmental conflicts that arise primarily in the context of the EU framework for deploying renewable energy sources as a central component of the EU energy transition. In particular, it will be examined whether they can play a role in setting concrete environment-related thresholds that cannot be exceeded and therefore require specific procedural guarantees in the respective legislative instruments. To this end, the second section of the paper briefly analyzes the EU's primary law on energy, climate,

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[13] A. Hardiman, *Climate, Energy and the Environment-Reconciliation of the EU Environmental Law with the Implementation Realities of EU Climate Law,* "Climate Law" 2022, vol. 12, no. 3–4, p. 242–272; J. Jendrośka, A. Anapyanova, *Towards a Green Energy Transition: REPowerEU Directive vs Environmental Acquis?*, "elni Review" 2023, vol. 23, p. 1 et seq.; H.T. Anker, B.E. Olsen, *EU Species Protection Law and Wind Energy: Current Challenges and Danish Experiences*, "European Energy and Environmental Law Review" 2023, vol. 32, no. 1, p. 38 et seq.; M. Montini, *Addressing the Conflicts Between Climate-related Renewable Energy Goals and Environmental Protection Interests Under the RED Directive*, "European Law Open" 2024, vol. 3, no. 1, p. 209, 210; E. Tla da Silva, *In Search of the Golden Ratio: The Conundrum of Balancing Environmental Protection and Energy Security*, "European Energy and Environmental Law Review" 2024, vol. 33, no. 6, p. 264 et seq.; J. Darpö, *Will European Biodiversity be Sacrificed on the Green Transition Altar?* "Nordic Environmental Law Journal" 2024, vol. 2, p. 7 et seq; M. Baran, *Conflicts of Interest in Environmental Law: Renewable Energy Goals Versus Environmental Protection in the RES III Directive*, in: F. Tiche, L. Squintani, K. de Graaf, H. Vedder, E. Woerdman (eds), *Sustainable Energy: Still United in Diversity? Integrating Energy, Climate and Environmental Law in Times of Geopolitical Instability*, University of Groningen Press, Groningen 2025, p. 133–156.

[14] Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724, OJ L 2024/1735, 28.06.2024.

[15] For the definition of the legal disciplines and the recognition of EU climate law and EU energy law as distinct disciplines see S. Romppanen, K. Huhta, *The Interface*…, p. 47 and footnotes 8 and 9.

[16] For EU environmental law as a legal discipline see M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham 2020, p. 1 et seq. For the divergent objectives of the three disciplines and especially of the EU's energy law and climate law see S. Romppanen, K. Huhta, *The Interface*…, p. 47, 58*;* K. Huhta, S. Romppanen*, Comparing Legal Disciplines*…, p. 660.

and the environment and the respective EU competences. The third section analyzes the intra-environmental conflicts that may arise from the RED III Directive and their resolution in normative terms in the context of the Directive. The fourth section analyzes the guidance that the EU environmental principles can provide to the regulation of intra-environmental conflicts, so as to ensure the coherence of EU environmental law and to contribute to the adoption of balanced solutions.

2. EU primary-law framework on energy, climate, and the environment

The provisions of EU primary law that are relevant for resolving the conflicts that arise between implementing renewable energy source (RES) projects and developing the necessary infrastructure and other environmental interests (e.g., biodiversity or forests) are mainly Articles 191 and 194 TFEU. In particular, Article 191(1) TFEU sets out the objectives of EU environmental policy making, which are far-reaching and determine the boundaries of the EU's competence on the environment.[17] Subsequently, the intra-environmental conflicts reflect the inherent tensions that mainly arise from simultaneously pursuing the first objective of the EU's environmental policy ("protecting, preserving and improving the quality of the environment") and the fourth objective ("promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change"). This is due to the fact that while RES projects contribute to climate mitigation even in a broader extraterritorial perspective, it can be associated with environmental impacts at the sites where the RES projects are being implemented.[18] In addition, the inherent tension between the aforementioned objectives of Article 191(1) TFEU is exacerbated by Article 191(2) TFEU, which stipulates that "Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union." In addition to this, Article 191(2) TFEU enshrines the principles that should guide the EU environmental legislative processes.[19] Furthermore,

[17] G. van Calster, L. Reins, *EU Environmental Law,* Edward Elgar Publishing, Cheltenham 2017, p. 8 et seq.

[18] A. Hardiman, *Climate, Energy and the Environment*…, p. 248–249.

[19] G. Bandi, *Principles of EU Environmental Law, Including (the Objective of) Sustainable Development*, in: M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar

Article 194(1)(a)–(d) TFEU clearly sets out the objectives of the EU energy policy, one of which concerns the development of renewable energy sources along with the promotion of energy efficiency and energy-saving –under (c). This objective can conflict with the first objective of the EU environmental policy under Article 191(1) TFEU. The respective objectives determine the contours of the EU's competence on energy under Article 194 TFEU.

The EU's competence on issues regarding both the environment and energy is a shared competence (Article 4(2) (e) and (i) TFEU). Subsequently, the principles of subsidiarity and proportionality guide the exercise of the respective competences.[20] It is also critical that politically sensitive decisions in these fields, such as those that concern resource sovereignty, are subject to specific procedures or are left to the discretion of the Member States (MSs). In particular, Article 192(2) TFEU requires that decisions concerning fiscal issues, measures affecting town and county planning, the quantitative management of water resources, the availability of those resources (directly or indirectly), land use (with the exception of waste management), or measures affecting MSs' choice between different energy sources and the general structure of their energy supply are subject to a special legislative procedure that requires unanimity in the Council and only the consultation of the European Parliament.[21] It is also worth noting that the CJEU has interpreted the respective competence limitation under Article 192(2)(c) in light of the EU's climate objectives and therefore ruled that its application shall be restricted to cases in which "it follows from the aim and content of that measure that the primary outcome sought by that measure is significantly to affect a Member State's choice between different energy sources and the general structure of the energy supply of that Member State."[22]

Publishing, Cheltenham 2020, p. 43 et seq.; N. de Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules*, Oxford University Press, Oxford 2020, p. 1 et seq., 31 et seq.

[20] J. Öberg, *Subsidiarity as a Limit to the Exercise of EU Competences*, "Yearbook of European Law" 2017, vol. 36, p. 391 et seq., https://doi.org/10.1093/yel/yew027; V. Kosta, *The Principle of Proportionality in EU Law: An Interest-based Taxonomy*, in: J. Mendes (ed.), *Executive Discretion and the Limits of Law*, Oxford University Press, Oxford 2019, p. 198, 202, P. Craig, G. de Búrca, *EU Law: Texts, Cases and Materials*, Oxford University Press, Oxford 2020, p. 83 et seq.

[21] N. de Sadeleer, *EU Environmental Law and the Internal Market*, Oxford University Press, Oxford 2014, p. 153 et seq.; K. Huhta, *The Scope of State Sovereignty under Article 194 (2) TFEU and the Evolution of EU Competences in the Energy Sector*, "International and Comparative Law Quarterly" 2021, vol. 70, no. 4, p. 991, 998 arguing that the competence limitation under Article 192(2)(c) TFEU is more procedural in nature.

[22] Judgment of the CJ of 21 June 2018, Case C-5/16, *Republic of Poland v European Parliament and Council of the European Union*, EU:C:2018:483, paras. 43–44 and 46. See also K. Huhta, *The Scope of State Sovereignty…*, p. 1008.

Furthermore, Article 194(2) TFEU reflects the principle of permanent sovereignty over natural resources and therefore enshrines a limitation in the exercise of the EU's energy competence by establishing that measures taken to further the objectives of the EU energy policy "shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply."[23] The CJEU has interpreted Article 194(2) TFEU in a manner that recognizes the strong discretion of MSs to decide on their means of energy production and on delicate political issues, such as the use of nuclear energy.[24] Despite the wide margin of discretion left to MSs to determine their energy system, the legally binding climate objectives *de facto* broaden the powers of the EU legislator to adopt legislative measures in the field of energy as means of achieving the objectives.[25]

The systematic interpretation of the above-mentioned provisions of EU primary law that set the objectives and governing the competence on environment and energy do not provide significant guidance for regulating the trade-offs between RES projects and their associated infrastructure and the protection of other environmental interests. This is due to the fact that the EU legislator is obliged to promote RES projects both under Article 191(1) (the fourth objective) and Article 194(1)(c) TFEU,[26] while at the same time having the obligation to take protective measures for the environment, including biodiversity and water resources, under Article 191(1) (the first objective).[27] This tension has already been pointed out. Moreover, Article 3(3) TEU, which enshrines sustainable development as a fundamental objective guiding all EU actions,[28] does not provide

[23] Ibidem, p. 993, 1000 et seq.

[24] Judgment of the CJ of 22 September 2020, Case C-594/18 P, *Republic of Austria v European Commission*, EU:C:2020:742, paras. 48–49, in which the Court ruled that the right of MSs to determine the conditions for exploiting their energy resources and choose their means of energy production under Article 194(2) TFEU also applies to nuclear energy.

[25] K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability of the Energy Transition in EU Law: Pro et Contra Hydropower*, "Journal of Energy and Natural Resources Law" 2025, vol. 43, no. 1, p. 29, 34.

[26] In the scholarly literature, the scope of Article 194 TFEU as a legal basis on energy has been extensively discussed. See C. Calliess, C. Hey, *Multilevel Energy Policy in the EU: Paving the Way for Renewables?* "Journal for European Environmental & Planning Law" 2013, vol. 10, no. 2, p 87, 95, who adopted the thesis that Article 194 TFEU does not cover EU policies to promote renewable forms of energy, but only measures concerning the technological development of RES activities. See also K. Huhta, *The Scope of State Sovereignty…*, p. 999–1000, who rightly points out that "legal instruments directly pursuing the objectives of Article 194, such as the promotion of renewable energy, would have to be adopted using Article 194 as their legal basis."

[27] K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability...*, p. 32–33.

[28] For the qualification of "Sustainable Development" in the EU legal order as a fundamental objective see G. Bándi, *Principles of EU Environmental Law, including (the Objective of) Sustainable*

significant guidance on resolving intra-environmental conflicts. This can be attributed to the multifaceted nature of the concept[29] of sustainable development, which consists of three – equally important, according to the dominant view – pillars (economic, social, and environmental),[30] so that no concrete criteria can be extracted regarding the resolution of collisions of different environmental interests. The situation is rendered even more perplexing, as MSs' right to choose among different renewable energy sources due to the limitation of the EU's competence on energy also justifies choices of certain forms of renewable energy – such as hydropower, which is associated with significant environmental impacts[31] or of forms of energy that raise both environmental and safety issues – such as nuclear energy.

The relationship between protecting biodiversity and promoting renewable energy sources was dealt with by the CJEU in the *Puglia* case. More specifically, the Court had to decide whether a national provision, which prohibited wind power production in a Natura 2000 site, contradicted EU law. The Court based its thesis on the reference made in Article 194(1) TFEU on the "need to preserve and improve the environment" and the limited scope of the prohibition. In light of the above, the CJEU ruled that the general prohibition is not "liable to jeopardize the European Union objective of developing new and renewable forms of energy."[32] Furthermore, the broader issue of the relationship between the environmental protection requirements and energy security as an objective of the EU energy policy was dealt with by the Court in *Inter-Environnement*

Development, in: M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham, Northampton 2020, p. 38–39.

[29] The term concept is used in a rather broad sense. In the literature, concepts are distinguished by the level of abstraction and generality, in the sense that they express the highest degree of generality to which a legal principle can be expressed. See V. Barral, *The Principle of Sustainable Development*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2017, p. 103, 105; P.-M. Dupuy, J.E. Viñuales, *International Environmental Law*, Cambridge University Press, Cambridge 2018, p. 59.

[30] M.C. Cordonier-Segger, *Sustainable Development in International Law*, in: H.-C. Burge, C. Voigt (eds), *Sustainable Development in International and National Law*, Europa Law Publishing, Groningen 2008, p. 93, 103 arguing that the three pillars are of equal importance; K. Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*, Routledge, London 2017, p. 104 arguing that the environment is the overriding system which sets the limits for economic and social development.

[31] K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability…*, p. 38 et seq.

[32] Judgment of the CJ of 21 July 2011, Case C-2/10, *Azienda Agro-Zootecnica Franchini Sarl and Eolica di Altamura Srl v Regione Puglia*, EU:C:2011:502, para. 55–57. The Court also required that the provision under consideration must respect the principles of non-discrimination and proportionality (paras. 64 and 73–75).

Wallonie. In that case, the Court ruled that a MS can exempt a project (e.g., a law that introduces a moratorium on producing electricity from nuclear reactors) from the obligation for an environmental impact assessment (EIA) if the alleged risk to the security of electricity supply is reasonably probable and the project in question is sufficiently urgent to justify not carrying out an EIA.[33] In addition, the Court also ruled that the security of energy supply constitutes a reason of overriding public interest under Article 6(4) of the Habitats Directive.[34] The CJEU also regarded the security of electricity supply as justifying the maintenance of effects of measures that contravene EU law (e.g., an order and a circular that have not been subjected to strategic environmental assessment [SEA] and a permit for the installation and operation of wind turbines, which was granted on their basis). However, the maintenance of effects of the respective measures – and especially those of the permit – would only apply to the extent that its annulment would be likely to have significant implications for the electricity supply of the entire Member State concerned, and only for the period of time strictly necessary to remedy that illegality.[35]

3. The rise of intra-environmental conflicts in the context of the EU energy and green transition

3.1. The basic features of the RED III Directive and the rise of intra-environmental conflicts

3.1.1. The sustainability aspects of different forms of renewable energy

The RED III Directive (2023/2413), which amended Directive 2018/2001, sets a common framework for promoting renewable energy at the EU level and establishes a Union-wide binding target for the share of renewable energy in the Union's gross final consumption of energy in 2030 of at least 42.5% (Article 3(1)). Achieving this objective is closely related with the long-term objective

[33] Judgment of the CJ of 29 July 2019, Case C-411/17, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres*, EU:C:2019:622, para. 101. The Court also ruled that the exemption must be strictly applied.

[34] Ibidem, paras. 151–159.

[35] Judgment of the CJ of 25 June 2020, Case C-24/19, *A and Others v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen*, EU:C:2020:503, paras. 92–95.

of climate neutrality and the intermediate objective of reducing emissions by 55% by 2030 (Recital 1).[36] Likewise, the Directive sets out sub-targets concerning the use of RES in specific sectors, including industry, transport, and construction (Articles 22a and 25). It is also worth noting that the Directive had multiple legal bases, specifically Articles 194(2), 114(1), and 192(2) TFEU.

The Directive adopts a unified approach toward the different forms of renewable energy in the sense that it does not prescribe which sources should be prioritized (a one-size-fits-all regulatory approach to renewable energy sources).[37] In this context, the EU legislator has not paid specific attention to the sustainability risks associated with the production of energy by the different types of renewable energy sources, such as hydropower, which can impact freshwater ecosystems.[38] Subsequently, the authorization of hydropower plants can give rise to collisions between the climate interests associated with its promotion and those for the protection of freshwater ecosystems. The Directive further specifies the cascading principle for the use of biomass (Article 3(3)), which requires that woody biomass[39] should be used according to its highest economic and environmental added value in a determined order of priorities. Derogations from the principle are foreseen for wood coming from natural disasters or when there are no other local options than bioenergy (Article 3(3a)). Furthermore, the Directive has strengthened, to some extent, the existing sustainability criteria for bioenergy[40] that have to be fulfilled, so that biofuels, bioliquid, and biomass are counted toward the increased renewable energy targets and are eligible for financial support (Article 29). These criteria concern certain environmental aspects of agricultural and forestry biomass, some of which are common for the two kinds of biomass and some of which are different.[41] It is also foreseen

[36] M. Montini, *Addressing the Conflicts*…, p. 211.

[37] K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability*…, p. 38.

[38] Ibidem, p. 36. It is also worth mentioning that more than 130 NGOs sent an open letter to the co-legislators in the context of the co-decision procedure for adopting the RED III Directive, in which they asked hydropower to be excluded from the renewable acceleration areas and to set sustainability criteria for hydropower in order to ensure that its effects on freshwater ecosystems are mitigated. See *Open Letter: Counting on New Hydropower to Accelerate Renewable Energy Deployment in Europe is Irresponsible*, https://wwfeu.awsassets.panda.org/downloads/open_letter_counting_on_new_hydropower_is_irresponsible_2_03_2023.pdf [access: 31.03.2025].

[39] For the opposition to the classification of forestry biomass as a renewable energy source with scientific arguments see *Letter from Scientists to the EU Parliament Regarding Forest Biomass*, https://www.pfpi.net/wp-content/uploads/2018/04/UPDATE-800-signatures_Scientist-Letter-on-EU-Forest-Biomass.pdf, [access: 31.03.2025].

[40] The term "bioenergy" encapsulates a wide range of energy sources generated from organic matter. It includes biomass (such as crops, wood pellets, and waste matter), biogases, and biofuels.

[41] The sustainability criteria, which are common for agricultural and forestry biomass, are as follows: a) They should not be sourced from land that was peatland in January 2008 under certain

that consistency should be achieved between the planned use of biomass and MSs' national carbon sink targets (Article 29(7)(a)). In spite of the stronger sustainability criteria for biomass, these criteria are complex in their application. Moreover, certain loopholes remain in the RED III Directive – for example, MSs can provide financial support to primary woody biomass under the conditions that are set and also enjoy a margin of discretion to determine the "old-growth forests" that are excluded from biomass production.[42] Subsequently, intra-environmental conflicts may arise, as the use of forests for the production of bioenergy, although limited to some extent by the respective provisions, collides with the need to regrow them as carbon sinks in the face of climate change.

3.1.2. The designation of renewables acceleration areas

A critical feature of the RED III Directive is its establishment of renewables acceleration areas (RAAs) (Article 15c), as they are regarded as a means to contribute to the faster deployment of RES (Recitals 25 and 26). The designation of RAAs thus presupposes that MSs set effective spatial planning processes in motion.[43] At the first stage, MSs have to conduct coordinated mapping of their

conditions (Article 29(5) and (6)). b) A minimum level of GHG emission reduction must be achieved by both agricultural and forestry biomass (Article 29(10)). Furthermore, indirect land use effects from both agricultural and forestry bioenergy used for transport, as well as bioliquids in other applications, must be reduced (Article 26(2)). In addition, agricultural biomass must fulfill sustainability criteria which concern specific pools, such as the soil carbon (Article 29(2)) and the land use categories from which biomass is extracted. In particular, agricultural biomass must not be extracted from land with a high biodiversity value, and more particularly, from primary and old-growth forests or highly biodiverse forests or other wooded land, from areas designated for nature protection, or from highly biodiverse grassland (Article 29(3)). Agricultural biomass should also not be extracted from land with high-carbon stock, such as wetlands or continuously forested areas (Article 29(4)). Furthermore, forestry biomass must fulfill the sustainability criteria that concern the production process to minimize the risk of using forest biomass derived from unsustainable production. In particular, national legislation must be set in place so as to ensure that the forest from which the forestry biomass is harvested does not have the status of primary or old growth forest, highly biodiverse forest and woodland, highly biodiverse grassland, or heathland (Article 29(6)). In addition, it is set out that harvesting must be carried out in a manner that not only considers the maintenance of soil quality and biodiversity, but also fulfills the standards of sustainable forest management (Article 29(6)(iv)).

[42] J. Stubenrauch, B. Garske, *Forest Protection in the EU's Renewable Energy Directive and Nature Conservation Legislation in Light of the Climate and Biodiversity Crisis – Identifying Legal Shortcomings and Solutions*, "Forest Policy and Economics" 2023, vol. 153, p. 1–11, https://doi.org/10.1016/j.forpol.2023.102996; M. Pigeon, R. Łuszczek, *Wiser with Wood. A Guide on How to Transpose the EU's Revised Renewable Energy Directive (RED III) to Better Protect Forests, the Climate, Public Health and Other Wood-using Industries*, Fern, ClientEarth, Brussels 2024.

[43] M. Wingenbach, K. Dünzen, S. Krieger, J. Gibson, *Overview of Renewable Energy Spatial Planning and Designation of Acceleration Areas in Selected EU Member States*, Öko-Institut e.V, Freiburg 2024, p. 9.

territory by 2025, in order to identify the domestic potential and the available land or inland water areas that are necessary for the installation of renewable energy plants and their infrastructure, so that their national contribution to achieving the EU target is met (Article 15b).[44]

At the second stage, and having as a starting point the areas identified under Article 15b, MSs must adopt plans designating RAAs in their territory for one or more renewable energy sources by 2026. Specifically, a MS can either prepare a single plan covering all RAAs in its territory and all renewable energy sources or plans which designate RAAs for one and more renewable energy sources and their connection systems. MSs should also use wildlife sensitivity mapping to exclude areas of high environmental value from RAA designation (Article 15c(1)(a)(iii)). Given their environmental impacts, a MS may exclude biomass combustion and hydropower plants from RAAs. Natura 2000 sites and areas designated under national protection schemes for nature and biodiversity conservation cannot be included in the RAAs (Article 15c(1)(a)(ii)). Instead, priority should be given to artificial and built surfaces (Article 15c(1)(a)(i)).

Moreover, in the context of the preparation of the plans for designating RAAs, the competent authorities have to prepare a "mitigation rulebook" which includes a set of rules on mitigation measures that have to be adopted in the specific area in order to contribute to the avoidance or significant reduction of the environmental impacts resulting from RES installations. The respective mitigatory measures aim to ensure compliance with the obligations laid down in Article 6(2) and Article 12(1) of Directive 92/43/EEC, Article 5 of Directive 2009/147/EEC, and Article 4(1)(a)(i) of Directive 2000/60/EC (Article 15c(1)(b)).

The plans designating RAAs should be subjected to a SEA under Directive 2001/42 and to an appropriate impact assessment (AIA) under Directive 92/43 if they are likely to have a significant impact on Natura 2000 sites (Article 15c(3)). In addition, Article 15d(1) states that MSs shall ensure public participation regarding the plans designating RAAs, in accordance with Article 6 of Directive 2001/42/EC, therefore, the public and the "public concerned" have to be identified. Given the fact that RES projects which are to be implemented in RAAs will benefit from simplified procedures and that the choice of the location of each one will be presumed to not conflict with respective interests relating to competing

[44] Commission Staff Working Document, Guidance on designating renewables acceleration areas Accompanying the document Commission Recommendation on speeding up permit-granting procedures for renewable energy and related infrastructure projects, Brussels, 13.05.2024, SWD(2024) 333 final, p. 4 et seq, https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2024)333&lang=pl [access: 31.03.2025].

land uses or forest or biodiversity protection,[45] it is critical that effective public participation occurs at an early stage, so that the diverse needs and interests of the affected citizens and relevant stakeholders are taken into account.[46]

Because energy infrastructure also has to be in place to support the significant scaling up of renewable energy production, MSs have to additionally adopt one or more plans to designate dedicated infrastructure areas for the development of grid and storage projects that are necessary to integrate renewable energy into the electricity system. This must take place where such development is not expected to have a significant environmental impact or such an impact can be duly mitigated or, where impossible, compensated for (Recital 46 and Article 15e).

In conclusion, the normative feature of RAAs in the form of plans does not *per se* give rise to the creation of intra-environmental conflicts, provided that the planning procedures are organized in a manner that can achieve the following two goals simultaneously: a) the optimal development of a country' s renewable energy sources and b) the minimization of land-use conflicts and the avoidance of conflicts with protected areas. Achieving the aforementioned objectives presupposes the use of appropriate data and tools for preparing the plans.[47] Additionally, the quality and detail of SEAs and AIAs are of critical importance for resolving possible conflicts, not only among competing land uses, but also between land needs for the implementation of RES projects and the protection of biodiversity.[48] One case that may create conflicts is when a single plan for the designation of RAAs covers the state's whole territory and all kinds of renewable energy sources and their connections to the grid. In such a case, it is doubtful – given the extent of the prospective assessment – whether the respective environmental impacts can be extensively investigated. The same applies to examination of a plan's impacts on protected areas and species in light of the precautionary principle.[49]

3.1.3. Integrated permitting procedure

Another significant feature of the RED III Directive concerns the introduction of provisions on organizing the permitting procedure. They reflect the

[45] M. Montini, *Addressing the Conflicts*…, p. 212.
[46] M. Wingenbach, K. Dünzen, S. Krieger, J. Gibson, *Overview of Renewable Energy*…, op. cit.
[47] Ibidem.
[48] J. Darpö, *Will European Biodiversity be Sacrificed*…, p. 16.
[49] Ibidem, p. 15–16.

model of an integrated permitting procedure[50] and build further on the RED II Directive in streamlining the administrative procedure, with the aim of eliminating administrative barriers for RES projects – including the lengthy administrative procedures – and infrastructure grids (RED III Directive, Recitals No. 16 and No. 20). Article 16 sets out rules that are applicable for permitting procedures regarding the projects located within and outside RAAs. It also provides a definition, according to which the permit-granting procedures cover all relevant administrative permits to build, repower, and operate renewable energy plans, the grid connection permits, and the environmental assessments. In addition, the permitting procedure must comprise all the administrative stages, from the acknowledgement that the application is complete to the issuance of the final decision (Article 16(1) and (2)).

The provisions concerning the permitting procedure serve the declared goal of simplifying and accelerating the authorization of RES projects both within and outside RAAs. Specifically, the purpose of accelerating the permitting procedures is served by the provisions that set significantly shorter time limits for authorizing RES projects, mainly in relation to the time limits that were foreseen in the RED II Directive (Articles 16a(1) and 16b(1)). Furthermore, the purposes of both accelerating and simplifying the permitting procedure are served by Article 16a(3). This provision exempts new RES plants, including those that combine different types of RES technology, and the repowering of renewable energy power plants[51] in RAAs from the obligation to undergo an EIA and an AIA with regard to their potential impacts on Natura 2000 sites, provided that the respective plant is located in a RAA for which the MS has established appropriate rules on "effective mitigation measures." In addition, Article 15c(1)(b) foresees that when appropriate mitigation measures are adopted for a particular RAA, killings and disturbances of the species listed in Annex IV of Directive 92/43 and for all species of birds resulting from the RES project in question are regarded as not being "deliberate" in the meaning of Article 12(1) of Directive 92/43 and of Article 5 of Directive 2009/147.[52]

The competent authorities are in any case obliged to carry out a screening process to identify whether the project under consideration is highly likely to give rise to significant unforeseen adverse effects with regard to the environmental sensitivity of the geographical area in which it will be located that were

[50] Ibidem, p. 13.

[51] Repowering is defined in Article 2(10) of the RED III Directive.

[52] For the CJEU jurisprudence on the terms "deliberate killing" or "disturbance" of the species set in Annex IV of Directive 92/43 and for all wild bird species under Directive 2009/107 see H.T. Anker, B.E. Olsen, *EU Species Protection Law and Wind Energy*..., p. 37–40.

not identified in the SEA accompanying the plan for designating RAAs. This screening process must be concluded within 45 days. If the competent authority has not decided whether the project should be subject to an EIA and to an AIA, if necessary, within that deadline, the project is regarded to be authorized from an environmental perspective (Article 16a(4) and (5)). Moreover, even if the public authority identifies the "highly likely environmental effects" of the project during the screening process, the project should be subject to an EIA only if the environmental effects cannot be mitigated by the measures identified in the plans designating RAAs or proposed by the project developer (Article 16a(5)). MSs can also exempt wind and photovoltaic projects from assessments under the EIA Directive and the Habitats Directive in the event of justified circumstances, including cases where accelerating the deployment of renewable energy is needed in order to achieve the climate and renewable energy targets (Article 16a(5)). If the competent authority decides that an EIA or an AIA is required, it has the obligation to provide relevant reasons based on clear evidence, and the assessments have to be concluded within 6 months of the administrative decision identifying the need to conduct the assessments (Article 16a(5)). It therefore becomes obvious that the respective assessments for projects in RAAs can be conducted in exceptional circumstances.

Additionally, the purpose of accelerating the permitting procedures is also served by provisions that set out procedures for authorizing RES projects outside RAAs. Article 16b(2) states that when an EIA is required, it has to be carried out in a single process that combines all relevant assessments. It also requires the project developer to provide certain information about the project and the competent authority to take this information into account and issue an opinion on the scope and level of detail of the EIA. In addition to this, if the permit contains conditions for mitigation measures, any killing or disturbance of the species protected under Article 12(1) of Directive 92/43/EEC and Article 5 of Directive 2009/147/EC shall not be considered to be deliberate (Article 16b(2)).

Another significant feature of the RED III Directive concerns the determination that, from February 21 2024 until climate neutrality is achieved, 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 to be in the overriding public interest and to serve public health and safety when balanced with other interests under the Birds Directive (2009/147), the Habitats Directive, and the Water Framework Directive (WFD) (Article 16f).

3.1.4. The intra-environmental conflicts arising in the context of the permitting procedure

The analysis of the relevant provisions leads to the conclusion that climate-related interests associated with the promotion of RES are given priority over the thorough consideration and protection of the other environmental interests (biodiversity, water protection) within the permitting procedure and the associated balancing process. More specifically, it is doubtful whether exempting projects located in RAAs from the obligation to undergo EIAs and AIAs can guarantee thorough examination and assessment of the prospective environmental impacts of each project and can identify possible environmental harm that can be avoided through different measures. This is due to the fact that a SEA is a different and broader assessment than an EIA.[53] Additionally, the compulsory preliminary screening process cannot ensure an effective assessment of all possible adverse effects of a particular project, especially given the strict time frames,[54] while even the identification of highly likely adverse effects[55] cannot result in an EIA or AIA if the effects can be mitigated through appropriate mitigation measures. As already mentioned, MSs also enjoy a wide margin of discretion to exempt from EIAs and AIAs wind and photovoltaic projects located in RAAs that satisfy the "highly likely" criterion, by applying justified circumstances, which are not precisely set out in the Directive. Therefore, its application can pave the way for bypassing the respective EU environmental legislation.[56] Furthermore, it also seems doubtful whether mitigation measures can be effective, especially in the case of highly likely adverse effects, as the possible damage cannot be precisely identified *ex ante* due to the lack of an individual assessment in the form of an EIA or AIA.[57]

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[53] A. Garcia-Ureta, *Environmental Impact Assessment in the EU: More than a Procedure?*, in: M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham 2020, p. 170–171; M. Montini, *Addressing the Conflicts*..., p. 212–213.

[54] Ibidem, p. 213.

[55] J. Darpö, *Will European Biodiversity be Sacrificed*…, p. 16 arguing persuasively that the "highly likely" criterion puts the burden of proof on public authorities and the public to demonstrate the need for further investigations. See also M. Malafry, *Renewable Energy Activities – Overriding the Interest of Biodiversity?*, in: M. Dahlberg, T. Fridström Montoya, M. Hansson, C. Zetterberg (eds), *De Lege: Hållbarhet ur ett rättsligt perspektiv*, Iustus förlag, Uppsala 2022, p. 159, 176 arguing forcefully that the removal of the EIA is not beneficial from the temporal perspective either.

[56] J. Darpö, *Will European Biodiversity be Sacrificed*…, p. 17.

[57] Ibidem. See also judgment of the CJ of 21 July 2016, Joined Cases C-387/15, C-388/15, *Hilde Orleans and others v Vlaams Gewest*, EU:C:2016:583, para 61; judgment of the CJ of 12 April 2018, Case C-323/17, *People over Wind and Peter Sweetman v Coillte Teoranta*, EU:C:2018:244, paras 35–36. In

Finally, the provision on the presumption of overriding interest (Article 16f) raises issues concerning legal clarity as well as possible insufficient consideration of environmental interests. In particular, it does not sufficiently take into account the different content of the respective derogation provisions, which poses difficulties to their cumulative implementation at the project level. For example, it is questionable how the presumption of an overriding public interest will be applied in the case of Article 6(4) of Directive 92/43 at the project level, given that its application presupposes both the existence of imperative reasons of overriding public interest and the lack of alternatives, a condition which is difficult to demonstrate, as no such assessment takes place in the majority of cases.[58] A similar observation can be made about the manner in which the presumption of overriding public interest will be applied with regard to Article 4(7) WFD, which also presupposes the lack of better environmental options.[59] Subsequently, introducing the presumption of an overriding public interest without modifying the derogation provisions in Directives 92/43 and 2000/60 (WFD) can create confusion for the competent authorities. Thus, decisions may be made which constitute significant deviations from the existing derogation provisions at the expense of other environmental interests. Finally, it is worth noting that while the climate interests in connection with the objective of energy security could, to some extent, justify the classification of certain large-scale RES projects as being of overriding public interest after consideration of all the circumstances, this cannot be the case for every single RES project.[60]

these rulings, the CJ ruled in a rather clear manner that a precondition for determining the compensatory measures under Article 6(4) of the Habitats Directive constitutes the precise identification of the damage to the site concerned and that the compensatory measures must be precisely analyzed, specifically at the stage of the appropriate assessment.

[58] Judgment of the CJ of 20 September 2007, Case C-304/05, *Commission of the European Communities v Italian Republic*, EU:C:2007:532, para. 83; judgment of the CJ of 16 February 2012, Case C-182/10, *Marie-Noëlle Solvay and Others v Région wallonne*, EU:C:2012:82, paras. 72–73. In accordance with this jurisprudence, conducting an AIA is a precondition for applying the derogation provision of Article 6(4) of the Habitats Directive. See also M. Malafry, *Renewable Energy Activities*…, p. 178.

[59] Judgment of the CJ of 11 September 2011, Case C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos Perivallontos and Others*, EU:C:2012:560, para. 67; judgment of the Court of 4 May 2016, Case C-346/14, *European Commission v Republic of Austria*, EU:C:2016:322, paras. 65–75.

[60] M. Malafry, *Renewable Energy Activities*…, p. 191. See also M. Baran, *Conflicts of Interest*…, p. 147.

4. Role of the principles of EU environmental law in the resolution of intra-environmental conflicts, with emphasis on the environmental integration principle

4.1. Role of the environmental principles in directing legal developments and ensuring the coherence of EU environmental law

Before entering the core of the analysis, certain initial qualifications about the role of the principles of EU environmental law should be made. First of all, as it is forcefully argued in the legal literature, the term "principle" is polysemous in the sense that it takes on varied legal meanings depending on the legal framework in which it appears.[61] In any case, in contrast to rules – which prescribe a concrete outcome or a prescribed behavior – principles reflect fundamental values and overarching objectives, are characterized by a certain level of generality, and constitute central elements of legal systems.[62]

It should be mentioned that the classification and role of the principles of EU environmental law are intertwined with the specificities of this legal field and those of the EU legal order. Therefore, the case law which has been developed for the general principles of EU law cannot apply to the legal analysis concerning the role and functions of the principles of EU environmental law.[63] In addition, the environmental policy is the only EU policy for which the TFEU (especially Article 191(2)) sets out certain principles that should guide secondary legislation.[64]

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[61] N. de Sadeleer, *Environmental Principles…*, p. 450.

[62] See J. Raz, *Legal Principles and the Limits of Law*, "Yale Law Journal" 1972, vol. 81, p. 823, who notes that principles could be clearly identified by recourse to the level of abstraction of a norm; R. Dworkin, *Taking Rights Seriously*, Harvard University Press, Cambridge 1977, p. 22–28, according to whom legal principles are propositions which provide general orientation and direction, to which positive law must conform, and inform judicial reasoning, while rules apply in an all-or-nothing fashion; H.L.H. Hart, *The Concept of Law*, Clarendon Press, Oxford 1994, p. 259 et seq., according to whom principles are distinct from rules in their level of generality and desirability and justify the reasoning about the rules; R. Alexy, *Zum Begriff des Rechtsprinzips*, "Rechtstheorie" 1979, no. 1, p. 59, 68–71, according to whom principles are goals that can be fulfilled to varying degrees; T. Tridimas, *The General Principles of EU Law and the Europeanization of National Laws*, "Review of European Administrative Law" 2020, vol. 13, p. 5, 8.

[63] E. Scotford, *Environmental Principles and the Evolution of Environmental Law*, Hart Publishing, Oxford 2017, p. 61.

[64] N. de Sadeleer, *Environmental Principles...*, p. 410. See also A. Aragão, *Environmental Principles in the EU*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2018, p. 454 arguing forcefully that environmental principles can also be derived from secondary legislation.

The environmental integration principle (Article 11 TFEU), which is horizontal in nature, is also classified as an EU environmental principle.[65] Moreover, it is argued in legal theory that by virtue of the environmental integration principle, all the EU's environmental principles are indirectly applicable to the definition and implementation of every EU policy.[66]

Due to the mandatory language of the TFEU provisions (Articles 11 and 191(2) TFEU), the respective environmental principles are legally binding.[67] In addition to other functions,[68] the principles[69] can also provide greater coherence to the rules composing the EU's environmental law by strengthening its internal logic.[70] Also, due to its transversal nature and function as a vehicle for the application of the other environmental principles, the environmental integration principle can exert influence on the regulative context of norms which are adopted within the framework of sectoral policies, such as the EU energy policy, and can give rise to intra-environmental conflicts. It therefore becomes evident that EU environmental principles can play a critical role in providing normative guidance for solving the intra-environmental conflicts in a balanced manner.[71]

[65] N. de Sadeleer, *Environmental Principles*…, p. 472.

[66] A. Aragão, *Environmental Principles in the EU*..., p. 452.

[67] N. de Sadeleer, *Environmental Principles*…, p. 473.

[68] The functions served by the EU environmental principles concern their use in the interpretation of ambiguous legal provisions, filling gaps of existing legislation, guiding judicial reasoning, and delimiting administrative discretion. See G. Martins, *Rules and Principles*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2018, p. 18 et seq.; N. de Sadeleer, *Environmental Principles*..., p. 412–418 and 474 et seq.

[69] For the characterization of EU environmental principles as directing principles in the sense that the EU institutions are obliged to take them into account when designing the respective policies and legal instruments to achieve the objective of the environmental protection see N. de Sadeleer, *Environmental Principles*…, p.406 et seq.

[70] Ibidem; G. Martins, *Rules and Principles*…, p. 20.

[71] N. de Sadeleer, *Environmental Principles*..., p. 418.

4.2. Normative directions and criteria arising from the environmental principles for resolving intra-environmental conflicts

4.2.1. Environmental integration principle and its link with the principles of prevention and precaution

The environmental principle which is of critical importance for resolving intra-environmental conflicts is the environmental integration principle,[72] which is enshrined in Article 11 TFEU and in Article 37 EU Charter of Fundamental Rights (EUCFR)[73] Despite the ambiguities surrounding Article 37 EUCFR and its categorization as a principle in the Charter,[74] which is equated with the lack of an autonomous legal function as a right or as a standard of judicial review,[75] Article 37 has the potential to generate innovative and interesting legal reasoning in the context of its conjunctive application with Article 11 TFEU.[76] This is due to the fact that such a conjunctive interpretation can strengthen the substantive content of the environmental integration principle, because Article 37 specifically presupposes the infusion of the requirements for a "high level of environmental protection" and improvement of the environment in the various EU policies. In addition, the conjunctive interpretation of Article 37 EUCFR along with Article 3(3) TEU, Article 11 TFEU, and Artic-

[72] For the reasons for which the environmental integration clause should be classified as a principle of EU environmental law and not as a concept or objective see V. Karageorgou, *The Environmental Integration Principle: Normative Content and Functions also in Light of New Developments, such as the European Green Deal*, "European Papers" 2023, vol. 8, no. 1, p. 159, 164–165. In this regard see also G. van Calster, L. Reins, *EU Environmental Law…*, p. 22; M. Montini, *The Principle of Integration*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2018, p. 139 et seq.; E Scotford, *Environmental Principles…*, p. 87–88; N. de Sadeleer, *Environmental Principles…*, p. 472–483.

[73] For the differences regarding the formulation of the environmental integration duty in Article 11 TFEU and in Article 37 EUCFR see M. Montini, *Addressing the Conflicts…*, p. 215–216.

[74] Article 52(5) EUCFR explicitly limits the cognizability of the principles to the interpretation of the acts of EU legal organs and of MSs when implementing EU law and in rulings on their legality.

[75] See also judgment of the CJ of 25 June 2024, Case C-626/22, *C. Z. and Others v Ilva SpA in Amministrazione Straordinaria and Others*, EU:C:2024:542, paras. 71–72 and 110, in which the Court conjunctively applied Article 35 EUCFR (right to health) and Article 37 EUCFR to interpret the Industrial Emissions Directive, reaching a conclusion according to which serious and persistent risks to human health deriving from environmental degradation may justify the suspension of industrial operations.

[76] E. Scotford, *Environmental Rights and Principles: Investigating Article 37 of the EU Charter of Fundamental Rights*, in: S. Bogojević, R. Rayfuse (eds), *Environmental Rights in Europe and Beyond*, Hart Publishing, Portland 2018, p. 133, 148.

le 191 TFEU also contributes to the enhanced recognition of environmental protection as an intersecting and fundamental concept of EU primary law that should guide all EU policies and activities.[77]

The environmental integration principle obliges the EU institutions and agencies to integrate the environmental protection requirements into secondary legislation concerning all the fields of EU policy, as well as into policy documents and individual decisions (state aid decisions) outside the area of the environment,[78] with the aim of promoting the fundamental objective of sustainable development set out in Article 3.3 TEU.[79] In addition, the term "environmental protection requirements," which according to Article 11 TFEU have to be integrated into EU legislation and policies, includes all the environmental policy objectives listed in Article 191(1) TFEU, the environmental principles listed in Article 191(2)TFEU, and the environmental policy aspects listed in Article 191(3) TFEU.[80]

The principle has a procedural dimension, which requires that the environmental considerations are taken into account in the Union decision-making processes as well as at the implementation stage through monitoring mechanisms.[81] Furthermore, the principle also has a substantive dimension, which is grounded in its link with the fundamental objective of sustainable development. This substantive dimension requires at least that the environmental considerations should be on equal footing with other sectoral policy objectives or interests in the decision-making processes and should be incorporated in the content of the respective legislative instruments or decisions as a result of a balancing process, so that the fundamental objective of a "sustainable development" can be achieved.[82]

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[77] A. Sikora, *Constitutionalisation of Environmental Protection in EU Law*, Europa Law Publishing, Zutphen 2020, p. 78–79, 135 et seq and 158. It is also worth referring that Article 37 EUCFR is explicitly referred to in Recital 6 of the EU Climate Law (Regulation 2021/1119).

[78] N. de Sadeleer, *EU Environmental Law and the Internal Market*, Oxford University Press, Oxford 2014, p. 26. For the legally binding nature of the principle see C. Calliess, E. Tuncel, *The Role of Article 11 TFEU in the Greening of the ECB's Monetary Policy*, "German Law Journal" 2023, vol. 24, no. 5, p. 803–804.

[79] For the classification of sustainable development as a fundamental objective in the EU legal order see G. Bandi, *Principles of EU Environmental Law...*, op.cit.

[80] J. Jans, *Stop the Integration Principle?,* "Fordham International Law Journal" 2011, vol. 33, no. 5, p. 1542.

[81] C. Calliess, E. Tuncel, *The Role of Article 11 TFEU…*, p. 805–806.

[82] S. Kingston, *Greening EU Competition Law and Policy*, Cambridge University Press, Cambridge 2012, p. 114, who rightly argues that the substantive dimension of the integration principle requires that, if various options are possible, the most favorable from an environmental perspective is chosen.

A criterion that arises from the procedural dimension of the environmental integration principle and is critical for resolving intra-environmental conflicts is that adequate processes must be in place to ensure the sufficient consideration of the environmental interests both at the decision-making stage and at the implementation stage through monitoring mechanisms. In this context, exempting RES projects located in RAAs from EIAs and AIAs may raise issues of incompatibility with the above-mentioned criterion. The reason for this is that the scope and level of detail of SEAs conducted before the designation of RAAs does not provide the necessary guarantees for sufficient consideration of the concrete advance effects of the individual projects.

In any case, given the urgent need for greater use of renewable energy in order to achieve the climate objectives, the simplification and acceleration of the authorization procedures for RES projects could be a legitimate objective that could justify exempting RES projects in RAAs from EIAs and AIAs, if certain procedural guarantees are in place. For instance, such guarantees are not in place and the respective criterion is not fulfilled in the case of projects located in an RAA that is designated as such due to its prior classification as an area suitable for the accelerated deployment of one or more types of renewable energy technology, in accordance with the requirements of Article 15c(4) of RED III Directive. This thesis is based on the argument that the designation of an RAA is not based on an SEA that involved recent data concerning the environmental effects of the current and prospective projects to be located in the area, but instead on one that was conducted for the prior classification of the area.

In addition, the hardly acceptable exemption of the projects located in RAAs from EIAs and AIAs should in any case be counterbalanced by the establishment of a screening procedure that encompasses the appropriate procedural guarantees for the examination of each project, with regard to its probability to cause unforeseen adverse environmental effects that were not identified in the SEA and therefore must be subject to an EIA and an AIA, if necessary. Given the strict time frames provided for completing the envisaged screening procedure (Article 16a(4)), it is highly questionable whether this procedure enables the examination of all possible adverse effects that a project can have on the various environmental interests. Therefore, this process does not seem to fulfill the procedural guarantees required by the respective criterion.[83] Furthermore, the possibility for an MS to exempt wind and photovoltaic projects located in RAAs from undergoing an EIA and an AIA, even if they fulfill the criterion

[83] M. Montini, *Addressing the Conflicts*…, p. 214.

of highly likely adverse effects after the screening process in the case of the so-called "justified circumstances" (Article 16a(5)), is not compatible with the afore-mentioned criterion. This is due to the fact that the exemption can be arbitrarily applied and that its application deprives necessary guarantees for sufficient consideration of the environmental interests.[84]

Furthermore, regarding the criteria that arise from the substantive component of the environmental integration principle, it should first be clarified that the delineation of the "appropriate level" of greening of each legislative instrument in the various sectoral policies and the extraction of concrete substantive criteria presents significant difficulties. In spite of these difficulties, a criterion that arises from the substantive dimension of the principle and has a negative character concerns a threshold (limit) that cannot be exceeded in the balancing process. This limit lies in the avoidance of any significant damage to the environment encompassing the various environmental goods (water, nature, or air) by the adopted (legislative) measure or individual decision. This thesis is grounded on the assumption that if such a threshold is exceeded, the environmental pillar of the objective of sustainable development would be violated.[85]

In the case of intra-environmental conflicts, this criterion thus requires the assurance that the environmental interest (biodiversity, for example) that is not prioritized in the authorization process of RES projects in favor of climate interests will not be significantly damaged. It is worth pointing out that this criterion aligns to some extent with the "do no significant harm" principle, which is an emerging principle in EU law.[86] Furthermore, the application of this criterion requires the adoption of further science-based criteria which will set the thresholds for acceptable damage caused to each specific environmental interest.[87]

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[84] J. Darpö, *Will European Biodiversity be Sacrificed*…, p. 17.

[85] V. Karageorgou, *The Environmental Integration Principle*…, p. 170. See also R. Famá, *Beyond "Fit for 55": The Emergence of the "Do No Significant Harm" Principle in EU Law and EU Funding Mechanisms*, "Review of European, Comparative & International Environmental Law" 2025, vol. 34, p. 62, 73.

[86] R. Famá, *Beyond "Fit for 55"*…, p. 73. As it is argued in the referenced article, the "do no harm" principle, or otherwise the "green oath" that is set in the EU Green Deal Communication, is rather broader than the "do no significant harm" principle and a general principle that applies mainly to EU lawmaking procedures (Ibidem, p. 66, 75). For reasons of clarity and sufficient determination, it seems preferable to align the negative aspect of the environmental integration principle in terms of setting a limit with the "do no significant harm" principle.

[87] This is also the case with the criteria that are set in the delegated acts of the EU taxonomy regulation and in the "Technical Guidance on the application of the 'do no significant harm' principle." See R. Famá, *Beyond "Fit for 55"*…, p. 65.

In this context, the criterion of avoiding significant harm to the environmental interests that are not prioritized in the authorization process cannot allow the exemption from EIAs and AIAs of the RES projects that are located in RAAs designated under Article 15c(4) of the RED III Directive. Furthermore, the application of this criterion can raise the issue of the incompatibility of the exemption of the RES projects located in RAAs from EIAs and AIAs if it cannot be ensured that significant damage will not be caused to the environmental interests that are not prioritized in the assessment process. Therefore, specific emphasis should be placed on both the effectiveness of the screening process and the design and effective implementation of the mitigation measures envisaged for the given RAA. Monitoring mechanisms should also be established. Furthermore, the possibility provided to MSs to exempt wind and photovoltaic projects located in RAAs from EIAs and AIAs, even if they fulfill the highly likely criterion in the case of "justified circumstances" (Article 16a(5)), is not compatible with the above-mentioned criterion, because possible significant environmental harm cannot be *ex ante* identified and avoided.[88]

Furthermore, given that all the environmental principles are applied through the environmental integration principle, its linkage with the prevention principle[89] can be a basis for adopting a criterion that can be used to resolve intra-environmental conflicts. This criterion would require that all the appropriate instruments are in place, so as to avoid significant environmental harm to the environmental interests that are not prioritized in the authorization process. Subsequently, the application of this criterion would lead to the same conclusions concerning the need for an effective screening procedure for the projects located in RAAs and highly likely to have unforeseen adverse effects,[90] as well as for the exemption from EIAs and AIAs established in Article 16a(5) of the RED III Directive.

In addition, the linkage of the environmental integration principle with the precautionary principle, which applies to the nature protection Directives (Directive 92/43 and Directive 2009/147), requires that the effects of RES projects on Natura 2000-protected areas and protected species are thoroughly examined and that projects can only be authorized under Article 6(3) of the Habitats

[88] M. Montini, *Addressing the Conflicts*…, p. 214.

[89] G Bándi, *Principles of EU Environmental Law...*, p. 43–44.

[90] It can be argued that even the criterion of highly likely effects that were not foreseen in the SEA is not compatible with the criterion that arises from the prevention principle because it raises the bar higher for a project to be subject to an EIA than the respective provision of the EIA Directive (Article 2 (1)), so that it cannot be ensured that significant environmental harm is prevented. See E. Tla da Silva, *In Search of the Golden Ratio*…, p. 267.

Directive if there is no doubt that they will not affect the ecological integrity of the site. It is therefore obvious that the respective provision for exempting RES projects located in RAAs from AIAs, and the application of AIAs only in exceptional cases when the highly likely criterion is fulfilled, does not meet the standards arising from the precautionary principle with regard to the soundness of the assessment and the authorization of projects that can have effects on the integrity of nature-protected areas which are in their vicinity.[91] In addition, the lack of an individual AIA also affects the design and implementation of mitigation measures, as well as the application of the derogation provision of Article 6(4) of the Habitats Directive. Moreover, an issue of coherence of EU environmental law arises, because deviation provisions regarding the well-established EU nature protection rules and the respective jurisprudence of the CJEU[92] are set for RES projects.

4.2.2. Principle of a high level of environmental protection

The principle of a high level of environmental protection,[93] which is set out in Article 191(2) TFEU, Article 3(3) TEU, and Article 37 EUCFR, is also important for resolving intra-environmental conflicts. A reference to a high level of environmental protection is also made in Article 114(3) TFEU. The principle imposes an obligation on the EU legislature, when formulating environmental legislation, to aim at a high level of protection, also taking into account the diversity of situations in the various regions of the Union. The importance

[91] J. Darpö, *Will European Biodiversity be Sacrificed…*, p. 16. As it is already mentioned, RAAs cannot be designated in nature protected areas.

[92] Judgments of the CJ of 11 September 2011, Case C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos Perivallontos and Others*, paras. 119–126, 134–139; of 14 January 2016, Case C-399/14, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, EU:C:2016:10, paras. 72–77; of 21 July 2016, Joined Cases C-387/15, C-388/15, *Hilde Orleans and others v Vlaams Gewest*, para. 63; of 17 April 2018, Case C-441/17, *European Commission v Republic of Poland*, EU:C:2018:255, paras. 188–192; of 16 July 2020, Case C-411/19, *WWF Italia Onlus and Others v Presidenza del Consiglio dei Ministri and Azienda Nazionale Autonoma Strade SpA*, EU:C:2020:580, paras. 35–44.

[93] There is discussion in the legal scholarship on whether the requirement for a high level of environmental protection can be qualified as a legal principle or an objective. On the one hand, it is argued that it can be seen as a policy objective that does not set any specific standard. See E. Scotford, *Environmental Principles…*, p. 145 (footnote 121). Other scholars qualify this requirement as a principle. See A. Sikora, *Constitutionalisation…*, p. 81. See also opinion of Advocate General J. Kokott in Case C-444/15, *Associazione Italia Nostra Onlus v Comune di Venezia and Others*, EU:C:2016:665, paras. 24–25. Although at this point the classification of such a requirement as a principle or objective cannot be further analyzed, it is understood as a principle in this paper, given its transversal nature and gradual recognition in the CJEU jurisprudence.

of the principle mainly as a tool for interpreting EU secondary legislation is also being increasingly recognized by the EU Courts.[94] Besides that, the principle is also transversally and horizontally relevant to all EU policies[95] and has a dynamic character, since the obligation also concerns improving the quality of the environment.[96]

Determining the substantive content of the principle[97] poses difficulties, as it presupposes a comparison with another level of protection.[98] Moreover, the respective provisions do not provide any hints as regards the level of stringency that the EU measures should have in order to fulfill the standards of the principle or the manner by which such a high level is achieved.[99] In any case, an obligation for the non-deterioration of the environmental interests, which co-exists with the obligation to take measures to ensure the constant improvement of the environment, can be inferred implicitly from the substantive component of the principle of a high level of environmental protection.[100] Additionally, it should be noted that the thesis for recognizing a stand-still obligation is also grounded

[94] Judgments of the CJ of 22 January 2009, Case C-473/07, *Association nationale pour la protection des eaux et rivières-TOS and Association OABA v Ministère de l'Ecologie, du Développement et de l'Aménagement durables*, EU:C:2009:30, para. 25–27; of 8 July 2020, Case C-343/09, *Afton Chemical Limited v Secretary of State for Transport*, EU:C:2010:419, para. 56; of 15 January 2013, Case C-416/10, *Jozef Križan and Others v Slovenská inšpekcia životného prostredia*, EU:C:2013:8, paras. 108–109; of 17 March 2021, Case C-900/19, *One Voice, Ligue pour la protection des oiseaux v Ministre de la Transition écologique et solidaire, Fédération nationale des Chasseurs*, EU:C:2021:211, para. 60 and 65; of 4 October 2024, Case C-727/22, *Friends of the Irish Environment CLG v Government of Ireland and Others*, EU:C:2024:825, para. 25; opinion of Advocate General J. Kokott in Case C-723/17, *Lies Crayenest and Others v Brussels Hoofdstedelijk Gewest and Others*, EU:C:2019:168, para. 33.

[95] Judgment of the CJ of 21 December 2011, Case C-28/09, *European Commission v Republic of Austria,* EU:C:2011:854, para. 121 (with regard to the transversal nature of Article 37EUCFR). See also A. Sikora, *Constitutionalisation*…, p. 82.

[96] Ibidem, p. 156.

[97] J. Jans, H.H.B. Vedder, *European Environmental Law: Treaty Based Law*, Europa Law Publishing, Zutphen 2024, p. 43 arguing that the principle of a high level of environmental protection is one of the most important substantive principles of EU environmental policy.

[98] Opinion of Advocate General J. Kokott in Case C-444/15, *Associazione Italia Nostra Onlus v Comune di Venezia and Others*, paras. 29–31.

[99] The CJ ruled that the level of environmental protection that must be ensured in accordance with this principle does not have to necessarily be the highest that is technically possible. See judgment of the CJ of 14 July 1998, Case C-284/95, *Safety Hi-Tech Srl v S. & T. Srl*, EU:C:1998:352, para. 49. See N. de Sadeleer, *The Principle of a High Level of Environmental Protection in EU Law: Policy Principle or General Principle of Law?* in: L. Gipperth, C. Zetterberg (eds), *Miljörättsliga Perspective Och Tankevändor, Vänbok till Jan Darpö & Gabriel Michanek*, Iustus Förlag, Uppsala 2013, p. 447, 450.

[100] D. Missone, *The Importance of Setting a Target: The EU Ambition of a High Level of Protection*, "Transnational Environmental Law" 2015, vol. 4, no. 1, p. 22–24; E. Tla da Silva, *In Search of the Golden Ratio*…, p. 270–273 who argues that the non-regression principle is embedded implicitly in the principle of a high level of environmental protection.

in the various non-regression clauses in EU environmental legislation, such as Article 6(2) of the Habitats Directive, Article 4(4) of the Birds Directive, Article 4(1) WFD, and Article 4(11) and (12) of the Nature Restoration Regulation.[101]

The criterion that arises from the non-deterioration obligation allows climate-related interests to be prioritized at the expense of other environmental interests in the authorization procedure for RES projects, only to the extent that the status of non-prioritized environmental interests is not deteriorated. Therefore, it can be argued that it cannot be guaranteed that the non-prioritized environmental interests will not be deteriorated by exemption from EIAs and AIAs for projects to be located in RAAs – and even more by the exemption of projects that meet the highly likely criterion in the case of justified circumstances. In addition, the presumption of an overriding public interest for RES projects without specific guarantees is not compatible with the above-mentioned criterion.

5. Epilogue

The article has analyzed the intra-environmental conflicts that arise from legal instruments, such as the RED III Directive, that aim to promote the increased usage of RES projects as a critical means of realizing the sustainable energy transition and the manner by which they are regulated. The main conclusion is that the intra-environmental conflicts that arise in the context of the RED III Directive are resolved in favor of the climate-related interests and at the expense of other environmental interests. This regulatory tendency demonstrates the "climate-centrism" that characterizes the EU Green Deal and certain legislative instruments which were either revised or adopted for its implementation (Net-Zero Industry Act).[102] It also demonstrates the lack of a coherent approach in dealing with the climate crisis and the simultaneous environmental crisis.

Furthermore, the article has examined the role that the EU environmental principles can play in setting limits on the prioritization of one category of environmental interests (e.g., climate-related interests) over others. Specific emphasis was placed on the role that the environmental integration principle

[101] E. Tla da Silva, *In Search of the Golden Ratio…*, p. 272.

[102] N. de Sadeleer, *The European Green Deal: Greenwashing Compounded by Deregulation (Omnibus Law) or a Genuine Paradigm Shift?* "European Journal of the Risk Regulation" 2025, vol. 16, no. 4, p. 1343, 1373, https://doi.org/10.1017/err.2025.20.

can play, because it constitutes a horizontal principle through which all the other environmental principles are applied, and on the principle of a high level of environmental protection, due to its transversal nature. The conclusion that underpins the analysis is that in spite of the legitimate aim of accelerating and simplifying the authorization procedures for RES projects and certain positive steps that have been taken, critical regulatory choices made in the RED III Directive do not comply with the criteria arising from the environmental principles. Specifically, the incompatibility of these choices lies in the lack of respective guarantees that are founded on the principles and can ensure that no significant damage is caused to the environmental interests that are not prioritized in the authorization procedures. It remains to be seen whether these choices will be subject to a judicial review of the CJEU through a request for a preliminary ruling by a national court. In any case, the emergence of intra-environmental conflicts is embedded in a more general issue, which concerns the extent of the acceptable sacrifices that can be made to protect environmental interests within the framework of a green transition emphasizing decarbonization. The environmental principles can therefore play a critical role by dictating more balanced approaches.

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