

Legal Challenge against Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy

In February 2023, CEE Bankwatch Network and ÖKOBÜRO delivered a legal challenge against Council Regulation 2022/2577, which aims at speeding up procedures for renewable energy projects throughout the EU. While it is crucial that a sustainable energy transition is done as soon as possible, this must not happen without keeping safeguards for the environment intact.

What is Council Regulation (EU) 2022/2577?

The Regulation in question is aimed at accelerating the deployment of renewable energy and linked projects, i.e. power plants and power grid connections. In doing so, the Regulation makes it possible for EU Member States to disregard the need for Environmental Impact Assessments (EIA)¹, as well as certain water-, habitats- and species protection provisions according to other EU directives (namely the Water Framework Directive, the Birds Directive and the Habitats Directive).² This may be done in specific areas, which have been designated with a Strategic Environmental Assessment.

Aside from that, the Regulation contains useful provisions to speed up small-scale solar and heat pump installations, which were not challenged.

Why does it violate the law?

The challenged act is in direct violation of several legal norms:

1. The Treaty on the Functioning of the EU (TFEU), as the TFEU does not cover the contested act. According to Articles 191 and 194 of the TFEU, EU environmental law must not undermine established environmental

¹ According to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

² Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

For more information

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protection, which would be the result of the contested act. Additionally, the chosen legal procedure does not comply with Article 192 TFEU, making the contested act unlawful. Furthermore, Articles 296 and 191 of the TFEU require the EU to only act in accordance with the principle of proportionality and based on available scientific and technical data, which was not done in this case.

2. The Aarhus Convention, as by omitting EIA procedures in certain cases, the public concerned is no longer able to participate in the procedure, nor in reality will they have access to justice to contest the outcome of the process.
3. The Alpine Convention, as the contested act ignores the need to do an EIA according to the Convention, as well as failing to ensure the absolute protection of bog soil.³
4. The Environmental Impact Assessment Directive, as under certain conditions, it omits the need for projects to undergo an EIA, if they have the potential to have a significant impact on the environment.
5. The Habitats Directive, the Birds Directive, and the Water Framework Directive, as the contested act suggests a presumption of overriding public interest and is likely to undermine a thorough individual assessment of projects needed under the aforementioned directives. Under existing legislation, it is already possible to decide that renewable energy projects are of overriding interest, so this new clause looks set to introduce more confusion and undermine public consultations.

What legal challenge was delivered and what are the potential results?

CEE Bankwatch Network and ÖKOBÜRO are environmental NGOs and therefore have the right to challenge administrative acts by EU bodies relating to the environment according to Article 10 of the Aarhus Regulation.⁴ This requires the Council to assess its Regulation for the alleged violations of EU law and make the necessary changes to the contested act. It may also deny the RIR, which gives the applicants the right to challenge its decision at the Court of Justice of the European Union (CJEU).

What happens next?

Now the Council has to assess the challenged act according to the alleged violations of EU and international law and may opt to change the Regulation. It may also deny the request. The Council now has 16 weeks, until June 15th 2023 to react in a written reply to the RIR. This may be extended by an additional 6 weeks until July 27th 2023. If the Council fails to comply with the RIR, or refuses to provide a reasoning altogether, proceedings at the CJEU may be submitted.

The text of the Request for internal Review can be found online [here](#).

³ According to the Energy and the Soil Convention Protocols of the Alpine Convention.

⁴ Commission Decision 2008/50/EC of 13 December 2007 laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the Aarhus Convention as regards requests for the internal review of administrative acts.