



Updates on energy project permitting

Energy Academy

Maaïke Faase & Leora Wit

17 June 2025

Norton Rose Fulbright LLP



Energy Academy 2025

Session 1 | 18 March

Grid access

Grid congestion poses a serious threat to energy projects, energy-intensive industries and other businesses. However, it also presents opportunities for new business models. Against this background, in the first session of 2025, we will explore opportunities for connected to gain flexible access to the grid. We will address:

- ✓ Time-based and time-block based transmission rights
- ✓ Cable pooling
- ✓ Capacity reduction contract
- ✓ Redispatch

Speakers: Marjolein Dieperink and Rosalie Blaauw

Session 2 | 15 April

Green hydrogen regulation

In this second session of our Energy Academy, we will take you through the most recent development and pitfalls of the green hydrogen regulation. What are the key things to keep in mind when entering this field? We will start with the basics and dive into the most important regulatory issues including:

- ✓ EU and Dutch regulation
- ✓ Legal definition of green hydrogen / EU compliant RFNBO
- ✓ Regulation and outlook hydrogen infrastructure
- ✓ Implementation of REDIII (renewable energy directive)

Speaker: Marjolein Dieperink

Session 3 | 17 June

Updates on energy project permitting

The third edition of our Energy Academy will focus on the relevant environmental and planning legislation in respect of development and operation of energy projects. This session will provide you with insights in different types of permitting procedures and possible environmental requirements, including:

- ✓ Choosing a location for your energy projects
- ✓ First experience with environmental law
- ✓ Recent developments

Speakers: Maaïke Faase and Leora Wit

Session 4 | 16 September

New Energy Act

After a summer break, we will continue our Energy Academy with a deep dive into energy regulation, with a special focus on:

- ✓ Amendments to the Electricity Act 1998 and the Gas Act.
- ✓ The active customer and producer
- ✓ Flex contracts and grid congestion
- ✓ Regulator ACM

Speakers: Marjolein Dieperink and Rosalie Blaauw

Session 5 | 14 October

CCS

In the fifth edition of our Energy Academy, we take you along the most common CCS project structures and common issues in the legal framework, with special focus on:

- ✓ Legal structure CCS projects
- ✓ EU ETS and government support & subsidies
- ✓ Bottlenecks in the legal framework

Speakers: Marjolein Dieperink and Wouter Hertzberger

Session 6 | 18 November

ESG & the energy sector

The last Energy Academy provides a practical deep dive into ESG in the energy sector, with a special focus on:

- ✓ The legal framework for ESG
- ✓ Carbon Emission Reductions & Compliance.
- ✓ The Energy Sector & Mandatory Climate Transition Plans

Speakers: Marjolein Dieperink and Sharon Oded

Agenda

01 Nitrogen crisis in the Netherlands

02 Nature protection permitting

03 Project procedure

04 Implementation REDIII

05 Q&A



1. Nitrogen crisis in the Netherlands

Overijssel gaat op slot: geen vergunningen voor boeren, bouwers en burgers

Kabinetsplan dat Nederland van stikstofslot moet halen juridisch zeer wankel, zegt Raad van State

Een snelle uitweg uit de stikstofcrisis is er niet

 NIEUWS

Milieuorganisatie stelt ultimatum: tientallen rechtszaken als minister niet binnen twee weken stikstofcrisis aanpakt

Streep door natuurbeleid vorige kabinet, huidige stikstofaanpak provincies van tafel

“Voorkom dat de stikstof uitspraak Raad van State Nederland volledig op slot zet”

4 februari 2025

Stop met praten, ga wat doen: aanpakken van het stikstof debacle

Wiersma wil stikstofberekeningen versoepelen, ondanks kritisch advies van de Raad van State

De les na vijf jaar stikstofcrisis: van uitstel komt afstel

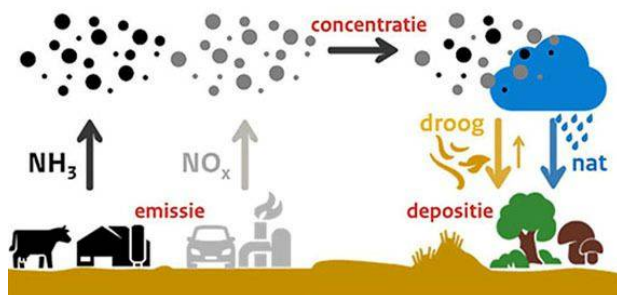
Stikstofdebat

‘Ik heb het probleem onderschat’, zegt premier Schoof. Het stikstofslot blijft nog even

Drenthe zit nu helemaal op slot door de jongste stikstof-uitspraken

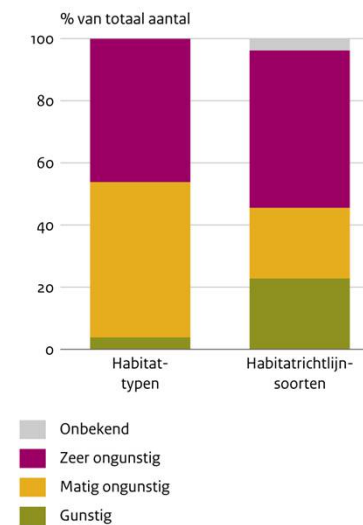
Nitrogen crisis in the Netherlands

- EU Habitats Directive
- 162 protected Natura 2000 areas in the Netherlands
- Nitrogen deposition
- May 2019: cancellation Integrated Approach to Nitrogen (*PAS*)



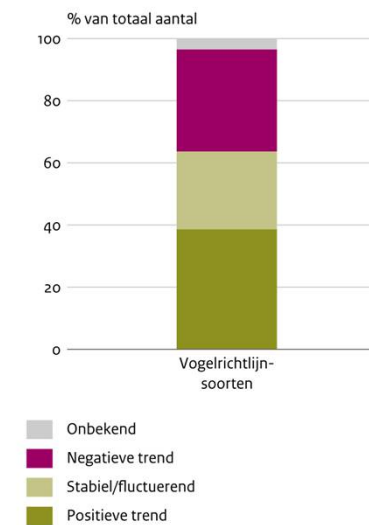
Staat van instandhouding van Habitatrichtlijn en trend van Vogelrichtlijn

Staat van instandhouding Habitatrichtlijn,
2007 – 2012



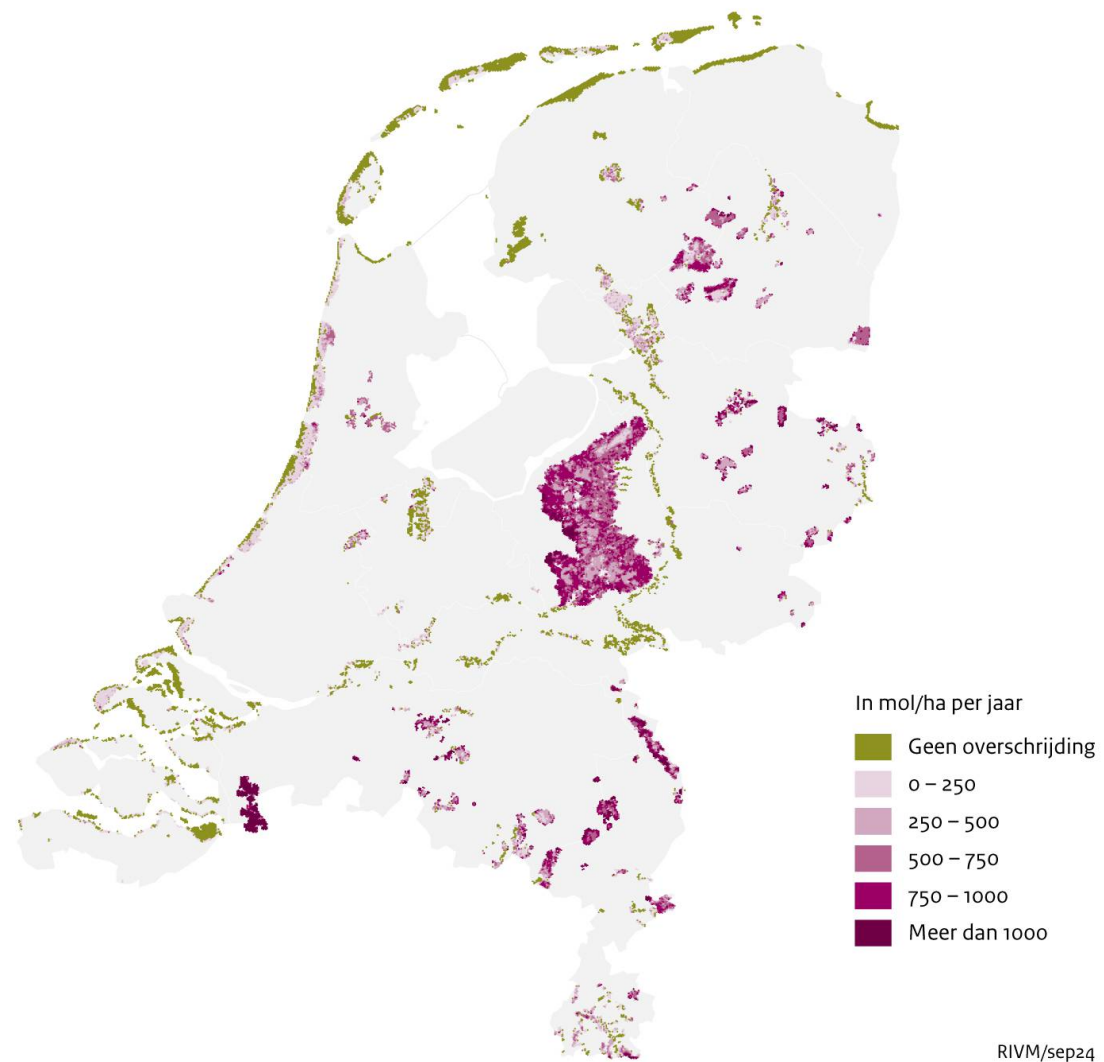
Bron: Ministerie van LNV; bewerking PBL

Trend van populatieomvang Vogelrichtlijn,
2001 – 2012



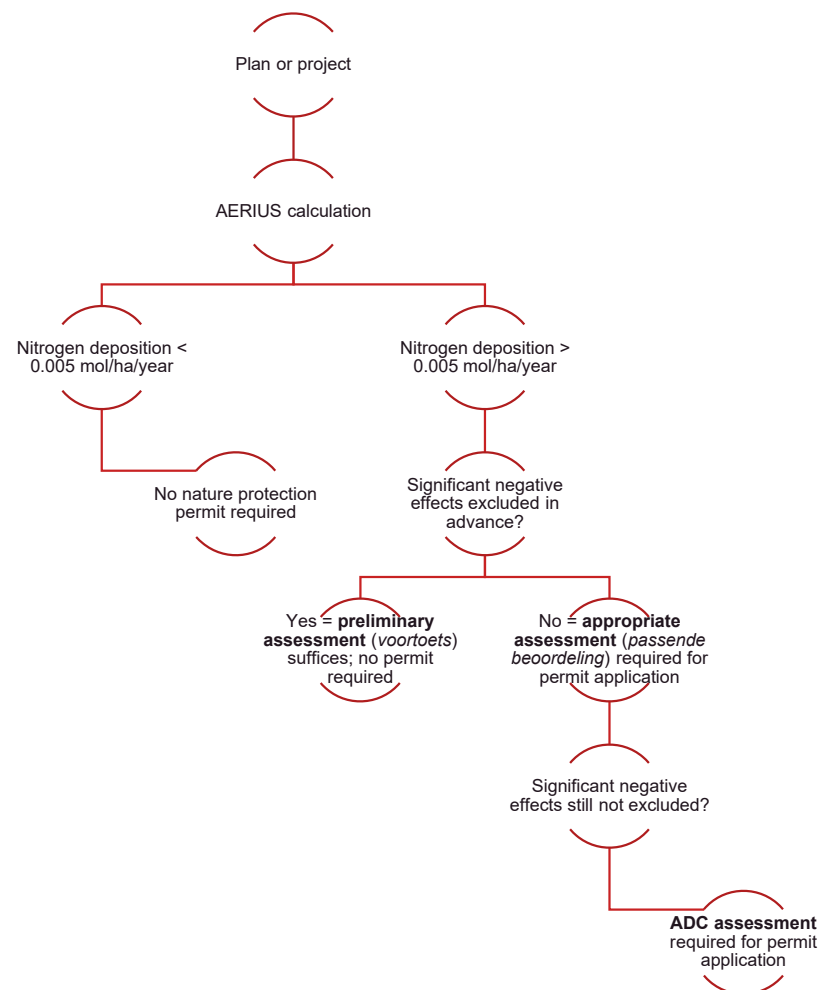
PBL/nov17
www.clo.nl/nh160401

Overschrijding kritische depositiewaarde in stikstofgevoelige Natura 2000-gebieden, 2022



2. Nature protection permitting

Overview nature protection permitting



Solving the issue – or making it worse?



1 July 2021: Introduction of the Construction Exemption (*bouwvrijstelling*)



2 November 2022: Cancellation of the Construction Exemption



1 January 2020: Internal netting (*intern salderen*) in preliminary assessment and without permit requirement



18 December 2024: Internal netting under strict conditions in appropriate assessment and with permit requirement



9 July 2021: Introduction of a 25 km threshold for calculating nitrogen effects in AERIUS Calculator



5 April 2023: 25 km threshold approved

Council of State ruling 18 December 2024 (*Rendac*) (I)

- Internal netting \neq permit exemption: comparing the effects of a new or modified project with those of an existing permitted situation (internal netting) does not eliminate the need for a nature protection permit
- Internal netting is a mitigation measure (*mitigerende maatregel*)
- Only “standard features” inherent to a project may be considered in a preliminary assessment
- Retroactive effect: also applicable to activities that “physically started” between 1 January 2020 and 1 January 2025 for which under the former legal framework no permit was required
 - Transition period until 1 January 2030 to apply for a new nature protection permit
 - In principle no enforcement actions



Council of State ruling 18 December 2024 (*Rendac*) (II)

- Effects of activities permitted under an existing nature protection permit or environmental permit may be used as permitted reference situation (*referentiesituatie*):
 - Nature protection permit: the unused capacity may also be considered.
 - Environmental permit: only the effects of the activities that are physically present may be considered. If the environmental permit is not used on a structure basis, it is also required that these activities may resume without a new nature protection permit.
- Conditions for internal netting:
 - 01 Mitigation benefits should be proven in advance.
 - 02 Modification or termination of the existing permitted situation must be guaranteed to avoid double use of the permitted reference situation.
 - 03 Additionality: only allowed if the use of the permitted reference situation is not also required to conserve, restore or prevent nature deterioration.

Legal challenges in nature protection permitting

Issues with obtaining new nature protection permits



More projects require an appropriate assessment



Nitrogen limits in Natura 2000 areas are often reached



New projects on hold

Issues for projects with existing nature protection permits



Not irrevocable: objections and appeal proceedings



Irrevocable: revocation requests and enforcement actions



Project modifications may require a new nature protection permit

3. Project Procedure

Project Procedure

Nationaal Plan Energiesysteem (National Energy System Plan)

Four pillars

- Carbon free energy system in 2035.
- Crucial role for hydrogen in industry and transport.
- Sustainable use of carbon.
- Use of heat and heat storage.

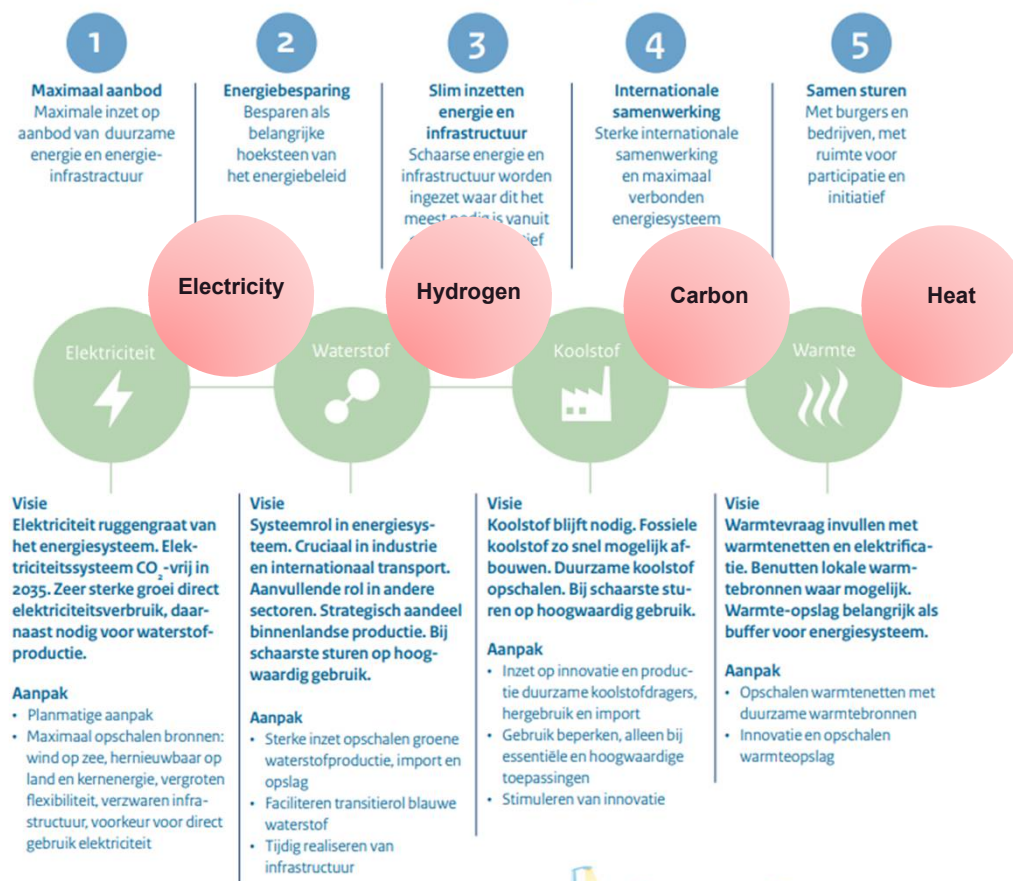
Spatial implementation via **Programma Energie Hoofdstructuur** (Programme Energy Main Structure)

Nationaal Plan Energiesysteem

Bouwen, besparen, verdelen & verbinden

Het Nationaal Plan Energiesysteem is de kabinetsvisie voor het energiesysteem tot 2050. In dit plan geeft het kabinet aan hoe we kunnen bouwen, besparen, verdelen en verbinden voor een duurzaam en rechtvaardig energiesysteem - nu en in de toekomst.

Het kabinet maakt hiervoor 5 richtinggevende keuzes:



Project Procedure

Programma Energie Hoofdstructuur (Programme Energy Main Structure)

Legenda

Huidige situatie

- Gascentrales
- Kolencentrale
- Kerncentrale
- Aanwijzingsgebieden locaties voor grootschalige elektriciteitsproductie
- Waarborging locaties kerncentrales (inclusief afgevalen)
- Voorkeursgebieden grootschalige elektrolyse (>100MW)
- Hoogspanningsnet bovengrond
- Hoogspanningsnet ondergrond
- Verbindingen internationaal
- Verbindingen wind op zee

Aantal circuits

- 1
- 2
- 3
- 4
- Bestaande Tennet station
- Hoogspanningsnet 380 kV
- Hoogspanningsnet 220 kV
- Hoogspanningsnet 150 kV
- Hoogspanningsnet 110 kV

Bestaande nationale buisleidingen

- Leidingen Gasunie
- Grensoverganglocatie
- Indicatief grensoverganglocatie
- Leidingenstrook (LSNED)
- Aangewezen buisleidingen tracé (Bkl)
- Indicatief aangewezen tracé buisleidingen

Ontwikkelingen tot 2030

Geplande uitbreidingen

- In aanbouw
- Nieuw station 220 kV
- Uitbreiding station 220 kV
- Nieuw station 380 kV
- Uitbreiding station 380 kV
- Eindpunt onbekend
- Nieuwe verbinding (indicatieve weergave)
- Nieuwe verbinding (extra circuits) (indicatieve weergave)
- Verzwarend
- Nieuwe verbinding (onherroepelijk)

Ontwikkelingen buisleidingen

- Delta Rhine Corridor: waterstof, aardgas, CO₂, ammoniak, LPG, Propeen (en meerdere ondergrondse gelijkstroomverbindingen)
- Porthos
- Armaris

Waterstofnetwerk Nederland

- Waterstofnetwerk Nederland

Ontwikkelingen tot 2050

Verwachte uitbreiding elektriciteitsnet na 2030

- Tilburg- Eindhoven
- Ens- Zwolle
- Diepe aanlanding Maasbracht (volgt tracé Delta Rhine Corridor)

Verwachte uitbreiding elektriciteitsstation na 2030

- 220 kV / 380 kV

Mogelijke toekomstige locaties voor grootschalig regelbaar vermogen

- Huidige centrales
- Voormalige Gelderlandcentrale

Ontwikkelbeeld buisleidingen 2050

- Mogelijke aantakkingen op het landelijk waterstofnetwerk
- Mogelijke aantakking waterstofproductie op zee
- Mogelijke uitbreiding CO₂ netwerk

Mogelijke verbindingen voor gevaarlijke stoffen

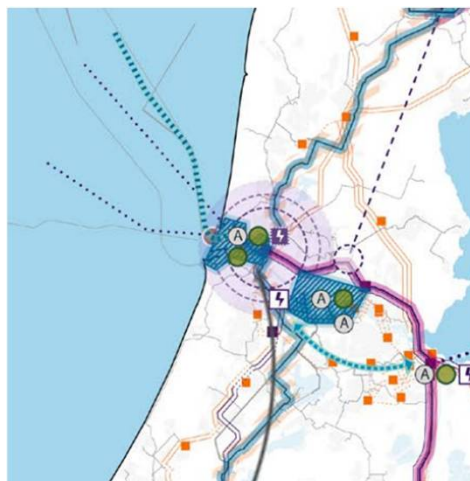
- Kerosine (Klaphek- Eindhoven)
- Alle stoffen (Moerdijk- Pernis)



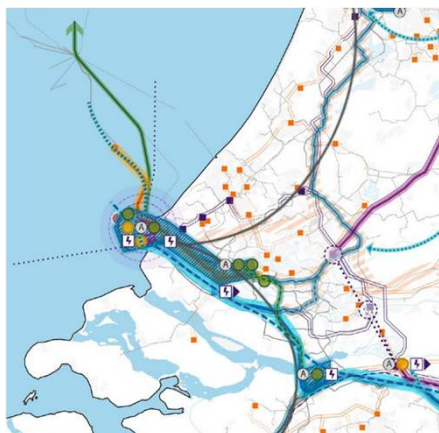
Project Procedure

Programma Energie Hoofdstructuur (Programme Energy Main Structure)

- Preferred areas for large-scale electrolysis (>100MWe)
- Expansion of 380 kV station
- Development of pipelines
 - Delta Rhine Corridor
 - Porthos
 - Aramis
 - Hydrogen Network Netherlands (*Waterstofnetwerk Nederland*)



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Project Procedure

Programma Energie Hoofdstructuur (Programme Energy Main Structure)

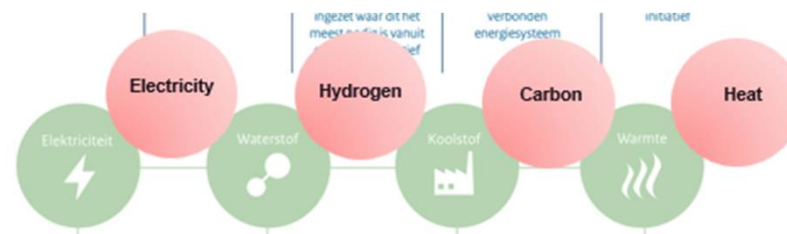
- Programme Energy Main Structure concerns part of the Dutch energy system that are of **national interest**.
- Spatial integration of these projects is at national level under the responsibility of the Dutch state (insofar required in cooperation with the Provincial authorities and local municipalities).

Excluded from the Programme Energy Main Structure:



- Wind and solar on land → Regional Energy Strategies (*Regionale Energiestrategieën*)
- District heating grids → Coverage area mainly local
- Green gas production → Production under 8.5 million cubic metres not of national interest

Projects of national interest can make use of the **Project Procedure**



The project procedure



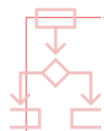
Notification of
the intention



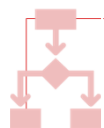
Notification of
participation



Exploration



Preliminary
decision



Project
decision

- The project procedure facilitates the permitting process for complex **projects** of public interest, including private initiatives for achieving public objectives such as the development of energy production facilities and infrastructures.
- The project procedure consists of five steps.
- For projects required by law and projects of national interest.
 - *Programma Energie Hoofdstructuur* (Programme Energy Main Structure)

- ✓ A concentrated and coordinated decision-making procedure
- ✓ Combine all approvals for a project into a single decision
- ✓ Directly amends the environmental plan
- ✓ Appeal can be lodged with a single authority (the Administrative Law Division of the Council of State) and on which the Division must rule relatively quickly


Environment and planning act

Project procedure – Required by law

The construction, expansion or extension of	
Power stations with a capacity of at least 500 MW	Article 9c(1) of the Electricity Act 1998
Wind farms with a capacity of at least 100 MW	Article 9c(1) of the Electricity Act 1998
Other renewable energy power stations with a capacity of at least 50 MW	Article 9c(1) of the Electricity Act 1998
Expansion of the national high-voltage grid (220 kV or higher)	Article 20(1) and (2) of the Electricity Act 1998
National gas transport network (at least 40 bar + diameter of at least 45.7 centimetres)	Article 39b, paragraph 1, Gas Act
LNG installations of at least 4 billion m3	Article 39b, paragraph 1, Gas Act
Mining works for exploration or extraction in or under nature reserves	Article 141a(1) of the Mining Act
Mining works and storage (including pipelines)	Article 141a(1) of the Mining Act
Under the new Energy act: The construction of a production facility for hydrogen gas using electrolysis	Article 6.1(1) under k of the Energy Act

Project Procedure versus Regular permitting procedure

Project Procedure



Concept note on scope and level of detail and its adoption (NRD); comprehensive impact analysis (IEA), including project EIA phase 1; draft project decision and project EIA phase 2.



Applies as an environmental permit for activities explicitly mentioned in the decision




Project decision directly amends the environmental plan


Regular permitting procedure



Environmental Impact Assessment (EIA)
(project related EIA)



Other permits under the environment and planning act (Natura 2000-activity, flora and fauna activity, environmentally harmful activity, water activity, etc.)



Environment plan (Permit for an activity that contravenes the environment plan)

4. Implementation REDIII

Renewable Energy Directive III (RED III)



Acceleration of energy transition and protection of the environment

Target: minimum of 42.5% renewable energy share in EU by 2030

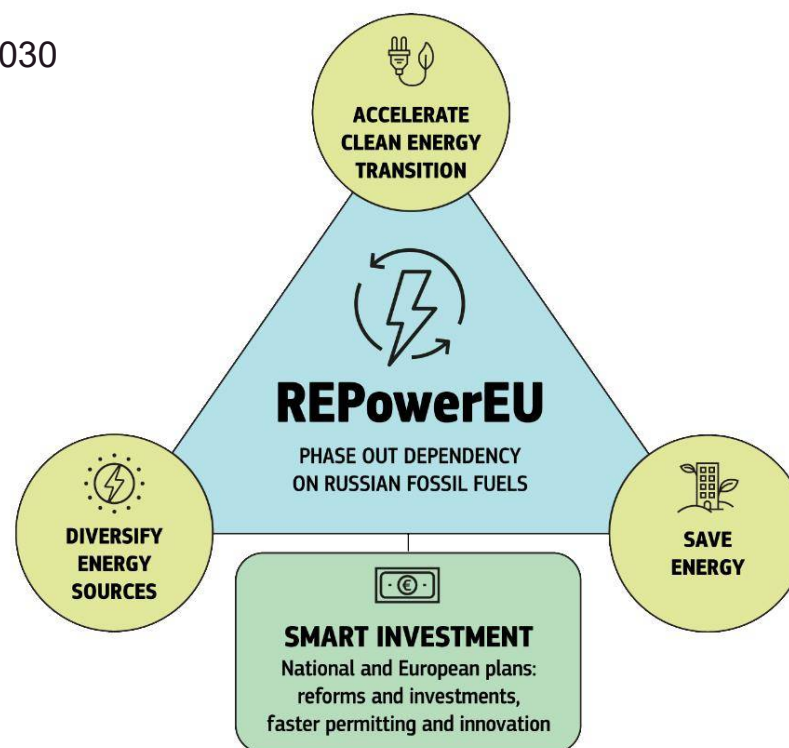


Entry into force on 20 November 2023

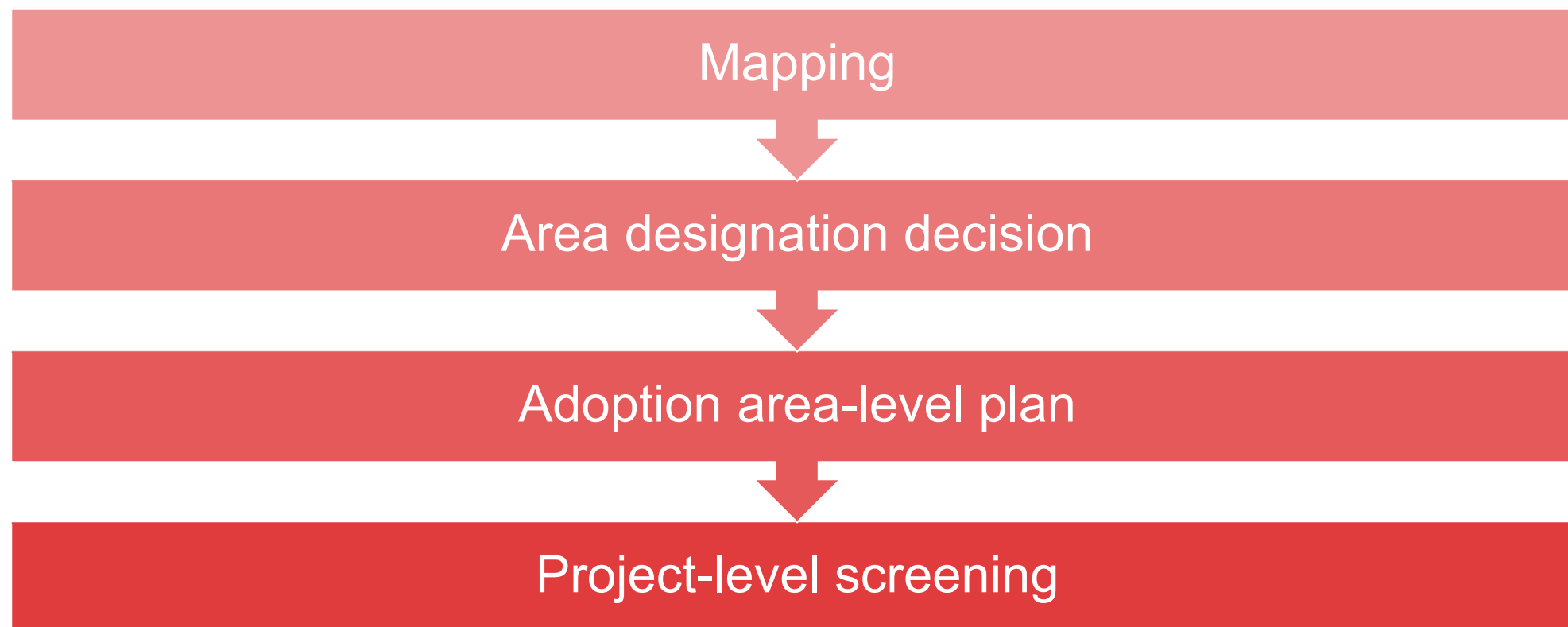
Deadline for implementation lapsed on 20 May 2025

NL: Implementation is expected on 1 July 2026

Notice of default by EC issued on 26 September 2024



Implementation REDIII



Designation of areas for the deployment of renewable energy



Acceleration zones for renewable energy production

No significant negative effects on environment and/or nature are expected or can be (fully) mitigated

Environmental Impact Assessment (EIA), and if applicable also appropriate assessment and species protection evaluation required

Preferably located within artificial and constructed areas; Natura 2000 areas and other protected nature areas are excluded



Acceleration zones for energy infrastructure and storage

No significant negative effects on environment and/or nature are expected, or if these effects can be limited or (partly) compensated

Environmental Impact Assessment (EIA), and if applicable also appropriate assessment and species protection evaluation required

Protected nature areas can be designated if there are no reasonable alternatives (excluding storage projects)

Deadline = 21 February 2026

Project-level screening

1. Does the project not result in any unforeseen negative effects that were not identified in the area-level assessment?
2. Are any cross-border effects expected as a result of the project?



- No significant negative effects on environment and nature are expected due to area-level assessment
- No EIA assessment, appropriate assessment and species protection evaluation required
- No nature protection permit or environmental permit required



- Publication of decision against which interested third parties may object and appeal
- Preparation of an EIA assessment, as well as appropriate assessment and species protection evaluation (if necessary) required within 6 months (subject to an extension in exceptional circumstances)
 - Exemption for solar and wind projects in justified circumstances, in addition to possibility to take mitigation measures. If no mitigation measures are available, (financial) compensation measures can be taken.

Evaluating the implementation of REDIII – Acceleration?

- ✓ No individual project assessment and permitting procedure at project-level required
 - ✓ No objections and appeals against project-level screening
 - ✓ Workload reduction for project operators
 - ✓ Automatic overriding public interest
 - ✓ Streamlining permit procedures with maximum decision terms
-
- Objections and appeals against decisions regarding (i) area designation and (ii) plan adoption
 - More detailed area-level assessment
 - Uncertainty for project operators
 - Additional permits remain required (such as project decision and amendment of the applicable environmental plan)

Questions?



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