The EU's New Energy and Climate Policy: Energy Security and the Moderation of Environmental Standards

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Abstract:
The article analyzes the evolution of the EU's energy and climate policy to explain that since Russia invaded Ukraine, a reformulation has occurred, characterized by the reconciliation of climate objectives with energy security and the flexibility of the environmental dimension. This rearrangement of the objectives of environmental policies has begun to take shape with the REPowerUE Plan, an energy package with which the EU intends to respond to the two dimensions of Europe's energy crisis: the need to deepen the transition towards climate neutrality and the duty to abandon dependence on Russian hydrocarbons. The review is based on two specific measures: Commission Delegated Regulation (EU) 2022/1214 and Council Regulation EU 2022/2577, key regulations for the massive deployment of renewable energies.

Keywords: energy security; gas natural; renewable energies; climate change; energy transition.

1. INTRODUCTION

Russia's invasion of Ukraine has forced the European Union (EU) to embark on a significant reformulation of its energy and climate policy, marked by the goal of moving away from dependence on Russian natural gas. Among many other issues, the war has highlighted two key aspects that underpin this study. Firstly, natural gas continues to be essential for large European industries, and

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therefore, investment in infrastructure for this energy source must be revitalised and its supply diversified through new agreements with more countries. Secondly, the advance of renewable energies is not proceeding as well as expected, as Europe is not in a position to replace its hydrocarbon consumption with renewable energies and gases in the short and medium term.[1]

The REPowerEU Plan, due in May 2022,[2] is the energy package that addresses the main challenges of adapting the EU's energy and climate policy to the new global energy context brought about by Russia's armed aggression against Ukraine. It has designed a strategy around four key ideas:

- Saving energy.
- Diversifying supplies.
- Rapidly replacing fossil fuels by accelerating the transition to clean energy.
- Intelligently combining investments and reforms.

The deployment of the REPowerEU Plan is leading to a profound reform of the regulatory framework for the energy sector in the EU, which is currently underway and focused on two main issues. On the one hand, a large proportion of the measures adopted from the REpowerEU Plan are related to the repositioning of natural gas in energy and climate policy. A hard lesson for those projecting an accelerated transition towards an energy model centred on renewable energies and associated technologies is that the energy transition will only be able to get rid of hydrocarbons slowly. On the other hand, another set of measures relates to an acceleration of the energy transition through the massive implementation of renewable energies, the incentive to new climate technologies, and the promotion of renewable gases. The aim here is to make it possible to replace the consumption of hydrocarbons where electrification is not yet viable, from a technological or economic perspective. It should not be forgotten that renewable energies remain Europe's main indigenous energy source and the EU's main energy security source. However, renewable gases and the development of new climate technologies now complement them.

In this context, the paper focuses on the second of the two relevant aspects of the new energy and climate policy born with Russia's invasion of Ukraine: the need to accelerate the energy transition away from dependence on Russian hydrocarbons and, more broadly, to achieve the disconnection from fossil fuels in general. From this perspective, the analysis takes as a starting

1. Another key aspect is the questioning of the electricity market model that the EU had been implementing since 1996, with the adoption of Directive 96/92/EC of 19 December 1996 concerning common rules for the internal market in electricity. This important, but separate, issue requires an extended treatment which is not possible in the confines of this article.
2. Commission Communication, 'REPowerEU', COM/2022/230 final, 18.5.2022.

point the EU's recognition of its energy vulnerability which has led to a succession of energy packages that include measures unthinkable until a few months ago.[3] A common aspect is that a reconfiguration of EU energy and climate policy is beginning, characterized by advancing energy security as a shaper of the transition towards climate neutrality. A relevant consequence is that energy and climate policy has already started to relax the environmental standards that seemed to accompany the energy transition and to do so to facilitate the massive deployment of renewable energy, an objective now necessary to accelerate the progressive renunciation of Russian fossil fuels.

The analysis will be based on a review of energy policy developments, focusing on the review of two specific legislative acts. First, the Commission Delegated Regulation (EU) 2022/1214,[4] which is one of the EU's first responses to the energy crisis caused by Russia's invasion of Ukraine. This regulation adds investments in natural gas and nuclear energy infrastructures to the catalogue of technologies eligible for EU green finance. Secondly, the Commission Delegated Regulation (EU) 2022/2577,[5] which adopts a set of temporary emergency rules aimed at speeding up the permitting process for renewable energy projects by member states.

These measures are particularly relevant in adapting the energy and climate policy initiated by the REPowerEU Plan. They give a strong impetus to the energy transition as the main strategy to achieve climate neutrality by 2050 – a legally binding target set by the European Climate Law – [6] and at the same time facilitate the accelerated disconnection from Russian gas, the main urgency for Europe today. However, they appear to be in contradiction with EU environmental policy. This study addresses these contradictions and proposes how the demands of energy security, climate objectives, and biodiversity protection should be reconciled within the European Union.

3. Gonzalo Escribano, Lara Lázaro and Ignacio Urbasos, 'Energía y clima en 2023: desacoplarse de Rusia conciliando seguridad energética y ambición climática', (2023:1) *ARI*, 10.01.2023: available at https://media.realinstitutoelcano.org/wp-content/uploads/2023/01/ari1-2023-escribano-lazaro-urbasos-energia-y-clima-en-2023-desacoplarse-de-rusia-conciliando-seguridad-energetica-y-ambicion-climatica.pdf (accessed on 20/06/2023).
4. Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L335, 29.12.2022.
5. Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities, C/2022/631, OJ 188, 15.7.2022.
6. Regulation (EU) 2021/1119 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).

2. FROM EUROPEAN ENERGY POLICY TO EU ENERGY AND CLIMATE POLICY

As is well known, the elaboration and implementation of the EU's energy policy has been a complex task. The difficulty for the Member States to cede competencies to the EU in this area is usually explained by the argument that energy activity constitutes an essential element of a country's security. From this perspective, the first measures that begin to shape a common energy strategy are related to the oil crises of the 1970s and the dependence on oil supplies from third countries.

It is, therefore, not surprising that in this first phase of drafting an initial energy strategy – the genesis of the future common energy policy – the EU's regulatory activity began to be designed with a focus on energy security. The priority concern was to give life to an energy strategy that sought to reduce dependence on oil-producing countries and impose obligations on member states related to establishing parameters for minimum reserves of this energy resource.[7]

By the 1990s, a European energy policy began to be implemented, focusing on the liberalization of the energy sector and the implementation of the internal market for electricity and natural gas. In this period, the EU adopted the so-called first energy package, consisting of Directives 96/92 of 1996 and 98/30 of 1998, which created the electricity and natural gas markets. Two subsequent legislative packages, in 2003 and 2009, deepened this process of liberalization and development of both markets.[8]

7. The first measures taken by the European Communities in this respect were Directive 68/414/EEC of 20 December 1968 requiring EEC Member States to maintain minimum stocks of crude oil and petroleum products OJ L-308 of 23 December 1968, 14–16; Directive 73/238/EEC of 24 July on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products, OJ L-228 of 16 August 1973, 1–2; or the Commission Communication of 5 June 1974, Towards a new energy policy strategy for the Community, R/1472/74 [ENER 28]. On this subject, see Bram Delvaux, Michael Hunt and Kim Talus (ed.), *EU Energy Law and Policy Issues* (Euroconfidentiel, 2008), 16–20.
8. Formally, the liberalization of the energy sector in the EU started with the first energy package consisting of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, OJ L-27, 30/01/1997, 20–29, and Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, OJ L-204, 21/7/1998, 1–12. Subsequently, two new energy reform packages were adopted to fine-tune the process of implementing the internal market for electricity and natural gas. The so-called second energy package consists of Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC", OJ, L-176, 15/7/2003, p. 1–12. L-176, 15/7/2003, 57–78, and Regulation (EC) No 1228/2003 of the European Parliament and the Council on conditions for access to the

Likewise, influenced by the increasingly important environmental policy, the new EU energy policy, created in the 1990s, also promoted measures to advance the sustainability of energy activity through incentives for renewable energies and energy saving and efficiency. In this second phase of the EU's energy policy, the three main objectives or pillars of the policy are defined: energy security, competitiveness or integration of the electricity and natural gas energy markets, and sustainability. Thus, the EU's energy policy aims to ensure secure, competitive, and sustainable energy supplies. On the other hand, from an external perspective, it seeks to achieve a common voice on energy matters, reduce dependence on third countries and position the EU as a benchmark in decarbonizing the global energy matrix with renewable energies.[9]

With the increasingly important role that climate change has begun to play in the EU and in the global environmental agenda, especially since the first decade of the 2000s, the reduction of greenhouse gases has become an essential dimension of the sustainability of the European energy model. Gradually, climate policy has become more prominent in energy policy, merging the two into what begins to appear as a distinct EU energy and climate policy. The latter becomes a third phase of energy policy, characterized by integration with climate policy. We will return to it later.

The three objectives of EU energy policy – energy security, competitiveness, and sustainability – are equally important and interrelated. The same measure can contribute to all three goals together, as is the case with the promotion of renewable energies, which simultaneously reduces greenhouse gas emissions,

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network for cross-border exchanges in electricity of 26 June 2003, OJ L-176, 15/7/2003, 1–10. Finally, the third energy package of 2009, consisting of Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC; Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC; Regulation (EC) No 713/2009 of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators; Regulation (EC) No 714/2009 of the European Parliament and the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 of 13 July 2009, OJ L-211, 14/8/2009, 1; Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 of 13 July 2009, OJ L-211, 14/8/2009, 1, L-211, 14/8/2009, 15–35, and; Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

9. Several legislative and non-legislative acts address this issue in developing the common energy policy. These include the Commission Communication, 'The Development of an energy policy for the European Union and its neighbours and partner countries' of 13 May 2003, COM (2003) 262 final [Not published in the OJ], and the Commission Communication 'An Energy Policy for Europe' of 10 January 2007, COM (2007) 1 final [Not published in the OJ].

strengthens the internal electricity market, and reduces dependence on hydrocarbon-producing countries.

However, even though the three objectives have the exact weighting, one of them has, in practice, been operating as a guiding criterion for each of the three phases described above. In the first phase, in which a Community energy strategy was born, the measures were focused on providing immediate responses and structural solutions to the two major oil crises of the 1970s. In the second phase, the EU's efforts focused on developing the internal market for electricity and natural gas, i.e., competitiveness. Finally, sustainability has been the distinguishing feature of the third phase of energy policy, giving way to an energy and climate policy.

By this, we do not mean that there is one objective that has greater value or weight than the others in the various phases of the evolution of energy policy, but rather that one of them acts as a guiding criterion for the measures that the EU has been adopting, in a context of equality and interrelation between these objectives. Thus, for example, a significant part of the eight legislative acts of 2018 and 2019 that form part of the EU Clean Energy Package,[10] address all three energy policy objectives with equal force, but sustainability takes on the role of a guiding criterion. Thus, for example, the Package includes a far-reaching reform of the electricity market to adapt it to climate objectives.

In this way, the other energy policy objectives are adapted to the one that acts as an articulator in a specific phase of their evolution. For example, in the third

10. The EU 'Clean Energy for all Europeans' Package, adopted in 2019, is based on the Commission Communication of the same name: COM/2016/8860 final is composed of the Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency; Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources; Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency; Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU; Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council; Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC; Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators; and Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity.

phase, in which sustainability operates as a guiding criterion for energy policy, the energy security objective was articulated from the energy transition. Therefore, just as measures relating to the promotion of renewable energies, storage, and renewable gases seemed to shape the EU energy security strategy, at the same time the diversification of natural gas supply or infrastructures associated with this energy resource lost strength.

3. EU CLIMATE AND ENERGY POLICY: A FOCUS ON CLIMATE CHANGE

The 2015 Paris Agreement consolidates what we have previously described as the third phase of the EU's energy policy. To accentuate this transformation, it begins to be described as energy and climate policy. The fight against climate change is central to the Commission's energy and environmental agendas. It gives rise to several legislative packages that entail far-reaching reforms to the EU's energy regulatory framework to adapt it to climate objectives. In this sense, climate objectives are guiding criteria for sectoral policies related to climate change, such as energy and the environment, and for others, such as agriculture, fisheries, and transport.[11]

An important distinguishing feature of this third phase of what is now known as energy and climate policy – derived from its integrated nature – is that it abandons the traditional scheme of three objectives and moves towards a governance model based on Integrated National Energy and Climate Plans (INECP), which include five dimensions: energy security; internal energy market; decarbonization; energy efficiency, and research, innovation, and competitiveness.

We can see that the energy security and internal energy market objectives/dimensions are maintained, and the sustainability objective is broken down into three different dimensions: decarbonization, energy efficiency, and research, innovation and competitiveness. This allows us to affirm that energy and climate policy – which we have identified as the third phase in the evolution of climate policy – is guided by the three dimensions that represent the sustainability of the energy model.

For almost 50 years, the EU has been promoting renewable energies,[12] which, together with energy saving and energy efficiency, have formed the core of the sustainable dimension of energy policy. Renewable energies are not only

11. This idea will be explored further in the next section.
12. In this sense, the Council Recommendation 'on the development of the exploitation of renewable energies in the Community' of 9 June 1988, OJ L-160, 28/6/1988, 46–48, put on the table the need to develop renewable energies in the then European Community. In 1995, the Commission published the White Paper, 'An Energy Policy for the European Union', proposing measures to encourage renewables, including a reform of taxation and state aid for energy products.

essential for the decarbonization of the energy matrix. They are also critical to the Union's security of supply, as they allow the progressive decoupling of fossil fuels. It also enables the deployment of a new decentralized, sustainable, and democratic energy model, which puts the consumer at the centre of decision-making.

The importance that climate policy has been assuming in recent decades, derived from the responsibility of the energy model centred on hydrocarbons for greenhouse gas emissions, has given new impetus to renewable energies as the driving force behind the energy transition. Compliance with the climate objectives that the EU has been progressively setting itself until climate neutrality in 2050 depends on the decarbonization of the energy sector, in which renewable energies play a fundamental role. In the same vein, the electrification of energy consumption or the development of green hydrogen as an alternative to natural gas for sectors and industries where electrification is not feasible will only be possible if renewable energies are deployed on a massive scale.

With the Clean Energy Package, the Commission proposed a profound reform of its energy model to lead the change toward a global energy transition. Through this initiative, the Commission incorporates the climate commitments agreed in the Paris Agreement into its energy policy and proposes ambitious climate targets for 2030: reducing greenhouse gas (GHG) emissions by at least 40% compared to 1990 levels, improving energy efficiency by 32.5% and increasing the penetration of renewable energies to 32% of final energy consumption.[13]

The Clean Energy Package is deployed in eight legislative acts that redesign the electricity market, reformulate the regulatory frameworks for energy efficiency, propose new governance of the Energy Union and climate action, give more extraordinary powers to ACER, and address risk preparedness in the electricity sector. This legislative package confirms a certain consensus that existed in the EU on three main issues:

1. Electricity is the priority energy resource of the energy transition.
2. Renewable energies should be the main source of electricity production due to their low greenhouse gas (GHG) emissions.
3. A set of net zero technologies and alternative and sustainable fuels will accompany the transition to climate neutrality.

A new step in EU energy and climate policy is taken by the European Green Deal, presented in 2019 as 'a new growth strategy aimed at transforming the EU into an equitable, prosperous society with a modern, resource-efficient and

13. European Parliament, 'Renewable energy', Fact Sheets on the European Union, April 2023.

competitive economy, in which there will be no net greenhouse gas emissions by 2050 and economic growth is decoupled from resource use'.[14] Climate neutrality for Europe by 2050 becomes a cross-cutting objective for all sectoral policies related to the fight against climate change.

A relevant aspect of the European Green Deal is that the energy and climate proposals are made following an integrated approach, proposed in the Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action.[15] In this way, it provides a roadmap with actions to achieve climate neutrality for the EU by 2050. These measures address in an integrated way the five dimensions to be included in the National Energy and Climate Plans (NECPs): decarbonization, energy efficiency, energy security, internal energy market, and research, innovation, and competitiveness.

The European Green Deal sets more ambitious climate targets: 'greenhouse gas emission reductions target for 2030 to at least 50% and towards 55% compared with 1990 levels in a responsible way'. To achieve this, it establishes a set of actions that include all sectors related to climate change. These include a new EU climate change adaptation strategy; clean, affordable, and secure energy; an offshore wind energy strategy; preservation and protection of biodiversity; an EU Biodiversity Strategy 2030; measures to tackle the leading causes of biodiversity loss; integration of sustainability into all EU policies; renewed sustainable finance strategy; revision of the relevant state aid guidelines, including the State Aid Guidelines on environmental protection and energy; and a proposal for the 8th Environmental Action Programme.

Notably, the European Green Deal deepens the net zero energy model by focusing on electricity generated with renewable energies. From this perspective, it calls for work in those sectors where electrification is difficult, encouraging new renewable technologies, such as offshore wind power, stimulating the production of renewable gases, especially for air and maritime transport and air conditioning, placing special emphasis on the green hydrogen strategy; and by promoting the development of storage technologies to back up the intermittency of renewables.

It also reconciles actions in the field of energy and climate with those that further environmental protection and biodiversity conservation. A central aspect of the EU's energy and climate policy embodied in the European Green Deal is that it seeks a sustainable transition towards a decarbonized economy, making energy activity – especially the deployment of renewable energies – compatible with environmental protection. In this regard, it seeks to follow the IPCC recommendations on the subject, which point out that some mitigation options may have negative socio-economic and environmental impacts on

14. Commission Communication, 'The European Green Deal' (COM/2019/640 final).
15. OJ L 323, 21.12.2008, 1–77.

biodiversity, food and water security, local livelihoods, and indigenous peoples' rights, mainly if undertaken on a large scale.[16]

In 2021, the Commission presented a new *Fit for 55* EU energy and climate package,[17] which sets a legally binding target to reduce EU GHG emissions by 55% by 2030 when compared to 1990 levels. *Fit for 55* is an ambitious package of proposals seeking to update EU legislation to align with climate targets.[18] Among the legal regimes that have started to be adapted to the climate targets are land use and forestry, the incentive for alternative fuels infrastructure, the Border Carbon Adjustment Mechanism, the Social Climate Fund, the ReFuel EU Aviation and FuelEU Maritime Initiatives, the EU Emissions Trading Scheme, the effort sharing scheme, energy taxation, renewable energy, energy efficiency and CO2 emission standards for cars and vans.

It also reinforces the need to transition to a carbon-neutral economy integrated with biodiversity conservation. In this regard, the Communication points out that:

> The twin climate and biodiversity crises cannot be treated in separately. We either solve the climate and nature crises together, or we solve neither. This also means that we should not take more resources than the planet can afford to share with us. If we help delicate land and ocean ecosystems recover, they can provide for life on the planet and fulfil their role in the fight against climate change. Restoring nature and enabling biodiversity to thrive again is essential to absorb and store more carbon.
>
> We therefore need to increase the capacity of the EU's forests, soils, wetlands and peatlands, oceans, and water bodies to act as carbon sinks and stocks. In a modernised agricultural sector, we also need farming practices that put land and nature first and regenerate the quality of our soils to ensure our food security.

The integrated approach to energy and climate policy obliges the EU to seek a balance between the energy dimensions -energy security and internal energy market- and those related to climate objectives -decarbonization; energy efficiency, and research, innovation, and competitiveness- and between all of them and the protection of the environment and biodiversity. In this sense, the energy transition is articulated by seeking to reconcile energy measures with the conservation of biodiversity and the objective of climate neutrality in 2050. Renewable energies, in principle, respond to this new energy and climate policy approach. Their promotion comprises one of the main climate change

16. Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2023. Synthesis Report. Summary for Policymakers* (IPCC, 2023): available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (accessed on 25.07.2023).
17. Commission Communication, 'Fit for 55: delivering the EU's 2030 Climate Target on the way to climate neutrality', COM/2021/550 final.
18. Council of the European Union, 'Fit for 55', 25.7.2023.

mitigation strategies, as they generate electricity without emitting large quantities of greenhouse gases. Further, they are at the heart of research, innovation, and competitiveness related to new climate technologies, such as storage or electric mobility. They also generate quality or sustainable employment and attract investment to member states. Finally, they promote the democratization of the electricity system.

However, the energy transition focus on renewable energies is also beginning to generate conflicts in local communities due to competition for land use with other activities such as agriculture, landscape, or environmental protection. The intensive use of land by renewable energies is becoming a recurrent problem in the Member States, which for some years now have been witnessing an increased judicialization of conflicts with local communities that reject sizeable renewable energy projects.

At the heart of this debate is the need to replace fossil fuels with renewable energies, which implies a massive deployment of renewable energies on the territory of the EU. Renewable energies require 1000 times more surface area to generate the same amount of electricity as a nuclear or thermal power plant.[19] This is why the concern to reconcile the massive deployment of renewable energies with the protection of biodiversity is a crucial aspect, and one addressed by *Fit for 55*.

4. THE EU'S NEW ENERGY AND CLIMATE POLICY: AN ENERGY TRANSITION SHAPED BY ENERGY SECURITY

As has been pointed out, the third phase in the evolution of energy policy is characterized by its integration with climate policy, articulated on the basis of climate objectives, which act as a guiding criterion for the measures adopted by the EU in the energy sphere. In this way, the goal established by Article 2 of the Paris Agreement, '(h)olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels', will condition the new energy and climate policy that begins to be implemented from the Commission Package, *Clean Energy for all Europeans*, and in the successive legislative packages proposed by the EU.

However, Russia's invasion of Ukraine has forced energy and climate policy reform. Successive acts of invasion of Ukraine by the Russian government led to soaring natural gas prices and, thus, electricity prices by the end of 2021, putting Europe's energy security under pressure. With the realization of the Russian aggression in February 2022 and the consequent suspension of natural

19. A 1 GW thermal power plant occupies a territory of approximately 1–1.5 hectares. A wind farm or a solar photovoltaic farm needs between 1000 and 1500 hectares to have a capacity of 1 GW.

gas supplies to Europe, the perfect storm for EU energy policy was finally unleashed. Europe lost its leading energy supplier and in the process, the electricity market model in place since the 1990s was called into question.[20]

This forced the EU to initiate a rapid process of energy decoupling from Russia, the outlines of which were embodied in the REPowerEU Plan, presented by the Commission on 18 May 2022.[21] The REPowerEU Plan is the EU's response to the major European energy crisis that is opening up with the Russia-Ukraine war. It seeks to reconcile the two major energy priorities: ending the EU's dependence on Russian fossil fuels and tackling the climate crisis.[22]

The REPowerEU Plan is a significant shift in the EU's energy and climate policy, ushering in a fourth phase of EU energy policy. In it, energy security begins to take on a shaping role in the transition to climate neutrality. Thus, we are moving from an energy and climate policy based on the pillar of sustainability and climate objectives to a new stage in which the dimensions of sustainability – decarbonization; energy efficiency, and research, innovation, and competitiveness – begin to be modelled by the now more influential energy security dimension.

Until the EU's REPowerEU Plan, the EU's climate objectives provided the fundamental guiding criteria for EU energy security measures. This obliged member states to adapt their actions in the field of energy security to the guidelines of the transition towards climate neutrality: energy saving and efficiency, massive implementation of renewable energies, preference for financing sustainable investments, and environmentally and biodiversity-friendly energy transition, among others. With Russia's invasion of Ukraine and the response offered by the REPowerEU Plan, the energy transition is beginning to expand its borders to relativize its basic postulates and take on board new guidelines emanating from the energy security dimension. With this, the requirement to decouple from Russian fossil fuels is beginning to make environmental protection and biodiversity conservation standards more flexible.

The REPowerEU Plan (the 'Plan') focuses on four central objectives:

- Saving energy.
- Diversifying supplies.
- Rapidly replacing fossil fuels by accelerating the transition to clean energy.
- Intelligently combining investments and reforms.[23]

20. Gonzalo Escribano, Lara Lázaro and Ignacio Urbasos, see Note 3.
21. Commission Communication, 'REPowerEU', see Note 2.
22. European Commission, 'REPowerEU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition', Press Corner, 18.5.2022.
23. Commission Communication, see Note 2.

The main measures proposed under these four work streams are:

a) Energy savings. The Plan focuses efforts on energy efficiency and, to a lesser extent, on changes in consumer behaviour. It thus increases the binding targets of the Energy Efficiency Directive, part of the *Fit for 55* Package, to 13%. It also urges Member States to use support measures, such as lower VAT on high efficiency heating systems and purchasing more efficient appliances.
b) Diversifying energy imports. The voluntary common procurement of gas, LNG and hydrogen through an EU energy platform has been one of the main measures adopted in the context of the energy crisis resulting from the Russia-Ukraine war. The Plan establishes that this energy platform will have three functions to support the common purchase of gas: aggregation and structuring of demand; optimized and transparent use of gas import, storage and transport infrastructures, and, from an international dimension, to conclude long-term cooperation frameworks with reliable partners, which support the purchase of gas and hydrogen and the development of clean energy projects. The Plan also proposes that the Commission consider the development of a voluntary joint procurement mechanism that would undertake the negotiation and contracting, on behalf of the participating Member States, of aggregate gas demand and competitive release to the market.
c) Substituting fossil fuels and accelerating the transition to clean energy in Europe. The Plan calls for the massive acceleration and expansion of renewables in power generation, industry, buildings, and transport, increasing the 2030 renewables target to 45% and raising total renewable energy production capacity to 1236 GW by that year. Solar PV will contribute almost half of the 2030 deployment target, with 600 GW. For wind energy, the Plan emphasizes the opportunities offered by offshore wind and encourages its development. It also proposes increasing the deployment rates of individual heat pumps, accelerating the domestic production and import of renewable hydrogen, and expanding biomethane. Furthermore, it presents measures to achieve decarbonization of industrial and transport sectors through electrification, energy efficiency, and fuel substitution. Finally, the Plan addresses the issue of slow and complex permitting processes as a critical obstacle to the renewable energy revolution and the competitiveness of the renewable energy industry. It proposes measures to streamline procedures at the national level.
d) Smart investment. The Plan estimates an additional investment of EUR 210 billion to deploy the Plan until 2027, concentrated on developing

interconnection networks and gas, LNG, oil, and hydrogen infrastructures; storage infrastructures; and electricity grids.

Following the integrated energy and climate policy approach, the Plan promotes integrated action on these strategic objectives to reduce dependence on Russian hydrocarbons and achieve climate neutrality by 2050. In this context, renewable energies play a crucial role in the Plan, as they are essential to curb the climate crisis and the progressive abandonment of Russian energy. In this sense, the Plan states: '(a) massive speed-up and scale-up in renewable energy in power generation, industry, buildings, and transport will accelerate our phasing out of Russian fossil fuels. It will also, over time, lower electricity prices and reduce fossil fuel imports'.[24]

Analyzing the proposals put forward by the Plan, one might think that it has only carried out a necessary adaptation of energy and climate policy – focused on climate urgency but respectful of the environment and biodiversity – to the new challenges posed by the urgent need to exclude Russia as a supplier of hydrocarbons. However, the Plan substantially modifies the energy and climate policy guidelines, which allows us to affirm that we are facing a new phase of this policy in the EU, marked by the recognition that fossil energies -especially natural gas- continue to be essential for European industry.

In this sense, the Plan adapts the energy transition to the need to expand the European strategy for natural gas. It proposes the diversification of imports of gas, liquefied natural gas, and hydrogen, and the creation of a common purchasing mechanism for these energies. From this perspective, it offers a strategy with two lines of action: i) strengthening natural gas transport structures, including constructing hybrid pipelines to enable the future transport of hydrogen, and ii) accelerating the replacement of fossil fuels with renewable gases and hydrogen.

In this new context, the EU's Plan seems to have forgotten about biodiversity – it was not mentioned once in the 2022 Communication – and this will be superseded by the EU's latest proposals, including some unforeseeable legislative packages with measures unimaginable before Russia invaded Ukraine, such as those reviewed below, which include relaxing environmental protection for renewable energy plans and projects, or intervening in member states' administrative law. We do not know how far energy security will influence the process of renouncing the EU's previously constructed environmental standards, as the Plan is just beginning to be implemented, and the Russia-Ukraine war that is lasting beyond all forecasts makes it impossible to assess the actual effects of the current energy crisis. However, the measures that the EU has begun to adopt in this regard offer a

24. Commission Communication, 'REPowerEU', see Note 2.

dark outlook for environmental protection and biodiversity recovery goals. The sub-sections below explain the basis for such a pessimistic view.

4.1. Commission Delegated Regulation (EU) 2022/1214

Regulation 2020/852 on establishing a framework to facilitate sustainable investments,[25] is an important EU measure to enable financing for sustainable investments. It aims to develop a set of common criteria for determining whether an economic activity is considered environmentally sustainable to determine the degree of environmental sustainability of an investment.[26]

A list of environmentally sustainable activities drawn up by the European Commission through delegated acts, including defining the technical selection criteria for each environmental objective, is incorporated in the so-called Taxonomy Regulation. To fulfil this mandate, the European Commission has progressively elaborated a set of delegated regulations. Among them is the Delegated Regulation 2022/1214.[27]

The Commission Delegated Regulation (EU) 2022/1214,[28] incorporates economic activities that substantially contribute to climate change mitigation and adaptation, those related to electricity generation with nuclear energy and natural gas, and hydrogen production with atomic energy. This makes these industries eligible for EU green finance. In this regard, it should be noted that in the previous Delegated Regulation 2021/2139,[29] the energy activity included in the list of environmentally sustainable activities was oriented towards renewable energy and renewable gases and did not include natural gas and nuclear industries.

The context can help us to understand this decision of the Commission, as Delegated Regulation 2022/1214 was adopted in March 2022, at the beginning of the Ukraine war and the height of the EU energy crisis. On the other hand, the fact that natural gas and nuclear energy activities can be considered sustainable investments and, therefore, eligible for green finance highlighted the influence of Germany and France in designing EU energy and climate

25. OJ L198/13, 22.6.2020.
26. Regulation (EU) 2020/852, on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, article 1 (1).
27. The other two Commission Delegated Regulations adopted to implement the Taxonomy Regulation are Delegated Regulations 2021/2139 and 2021/2178.
28. Commission Delegated Regulation (EU) 2022/1214, see Note 5.
29. Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, C/2021/2800, OJ L 442, 9.12.2021.

policy. It is also a clear example of the new role of energy security as a dimension beginning to shape the EU's climate strategy.

However, with respect to the analysis in this paper, the relevant feature is the way in which energy and climate policy are beginning to subordinate environmental objectives to the interests of the energy security dimension, motivated by the urgency behind the EU's efforts to abandon its reliance upon Russian fossil fuels. The need to maintain a development model that has not been able to abandon dependence on hydrocarbons for a large part of European industry has led to a phase of relaxation of environmental protection rules in favour of a more realistic transition to climate neutrality in terms of the role that renewable gas[30] will play in this process.

4.2. Council Regulation (EU) 2022/2577

Regulation (EU) 2022/2577 of 22 December 2022,[31] forms part of the measures with which the REPowerEU Plan is beginning to be deployed. Its objective is to establish 'temporary rules of an emergency nature to accelerate the permit-granting process applicable to the production of energy from renewable energy sources, with a particular focus on specific renewable energy technologies or types of projects which are capable of achieving a short-term acceleration of the pace of deployment of renewables in the Union.'[32]

The first temporary measure proposed by Regulation (EU) 2022/2577 revolves around the overriding public interest. According to Article 3, the planning, construction, and operation of plants and installations for the production of energy from renewable sources and their connection to the grid, including associated technology, shall be presumed to be in the overriding public interest and to contribute to public health and safety, when weighing the legal interests of each case, for Articles 6(4) and 16(1)(c) of Council Directive 92/43/EEC (5), Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.[33]

This means that Member States will have to prioritize the construction and operation of such infrastructure when weighing the legal interests of each case in the planning and permitting process. However, regarding species protection, such prioritization can only apply if adequate species conservation measures are undertaken to maintain species populations at a favourable conservation status, and sufficient financial resources and areas are made available.[34]

To understand the impact of this measure, we will review one of the cases where it can be applied, Article 6(4) of Council Directive 92/43/EEC, the

30. Green hydrogen, biomethane, biogas or synthetic natural gas (SNG).
31. Council Regulation (EU) 2022/2577, see Note 4.
32. Ibid, article 1.
33. Ibid, article 3.1.
34. Ibid, article 3.2.

Habitats Directive. According to Article 6(3), plans or projects which, without being directly related to the management of the site, are likely to have an appreciable effect on Natura 2000 special areas of conservation shall be subject to an appropriate assessment of their implications for the site in the light of the site's conservation objective. In the light of the conclusions of the assessment of the impact on the site and without prejudice to paragraph 4, the respective national authorities shall approve the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, where appropriate, after having obtained the opinion of the general public.

Article 6(4) states:

> If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Thus, according to Article 3 of Council Regulation (EU) 2022/2577, the public interest ground required in Article 6(4) is presumed for cases where the administration determines that a plan or project whose appropriate assessment has had an unfavourable outcome should be carried out: that is, where it has been concluded that the respective plan or project is likely to have an appreciable effect on a Natura 2000 special area of conservation. We see, therefore, how the deployment of renewable energies is facilitated in special areas of conservation that enjoy the highest degree of legal protection at the European level.

The only safeguard for Natura 2000 special areas of conservation, contained in Article 3 of Council Regulation (EU) 2022/2577, is that 'appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken, and sufficient financial resources as well as areas are made available for that purpose.'

A second measure proposed in Council Regulation (EU) 2022/2577 is accelerating the permitting process of renewable energy production. Specifically, it establishes significantly shorter time limits than the current authorization procedures in the Member States for the installation of solar energy equipment, the repowering of renewable energy electricity production facilities, renewable energy projects, and related grid infrastructure necessary to integrate renewable energy into the system, and the deployment of heat pumps.

In this way, the Commission Delegated Regulation (EU) 2022/1214 and the Council Regulation (EU) 2022/2577 incorporate necessary measures that

clearly illustrate the reformulation of energy and climate policy, driven by the imperative need to achieve a near-term transition away from Russia's fossil fuels. They also show the path taken by the EU in its efforts to reconcile climate strategy and objectives with energy security.

However, these legislative acts seem to relax the environmental standards applied to the energy transition in general and the implementation of renewable energies in particular. We will analyze this issue in the final section of this study.

5. CONCLUSION: A CONFLICT WITH ENVIRONMENTAL POLICY

The measures contained in the Commission Delegated Regulation (EU) 2022/1214 and the Council Regulation (EU) 2022/2577 seek to facilitate the massive deployment of renewable energies, which is framed within the objective of rapid substitution of fossil fuels by accelerating the transition to clean energy, set by the REPowerEU Plan. As seen in the previous section, both pieces of legislation highlight the new direction energy and climate policy seem to take: energy security is no longer conditioned by the sustainability dimensions of the EU's energy model. It is beginning to shape the very transition toward climate neutrality.

From a pure sustainability and climate perspective, it makes no sense that the EU could integrate natural gas projects into the catalogue of activities that substantially contribute to climate change mitigation and are, therefore, eligible for green finance. However, this integration is perfectly justifiable from an energy security dimension, as the energy transition must be adapted to the new urgency of moving away from dependence upon imports of Russian hydrocarbons.

Moreover, only for reasons of energy security does it make sense to argue that there is such an imperative need to deploy renewable energies on a massive scale that the EU can presume the public interest of renewable energy plans and projects with the most legally protected sites in Europe, such as Natura 2000[35]. Renewable energies must be deployed intensively on the ground

35. Council Regulation (EU) 2022/2577, article 3(1): 'The planning, construction and operation of plants and installations for the production of energy from renewable sources, and their connection to the grid, the related grid itself and storage assets shall be presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual case, for the purposes of Article 6(4) and Article 16(1)(c) of Council Directive 92/43/EEC (5), Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council (6) and Article 9(1)(a) of Directive 2009/147/EC of the European Parliament and of the Council (7). Member States may restrict the application of those provisions to certain parts of their territory as well as to certain types of technologies or to projects with certain technical characteristics in accordance with the priorities set in their integrated national energy and climate plans'.

because, as the EU rightly points out, they are indigenous energy sources that will enable a gradual abandonment of Russian natural gas, oil, and fossil fuels generally. At the same time, they are the main hope that climate neutrality by 2050 will be possible.

However, the model established by the Habitats Directive is suitable for establishing coexistence between Natura 2000 protected areas and renewable energies. The requirement that an appropriate assessment must be carried out when a plan or project is likely to impact these sites significantly is compatible with the spirit of the existence of Natura 2000. Moreover, the Habitats Directive allows for the possibility that a plan or project that has obtained negative conclusions from the appropriate assessment may be carried out when there are overriding reasons of public interest, only obliging the State to take the necessary compensatory measures. From this perspective, the presumption of public interest distorts the function of the appropriate assessment.

Furthermore, it should be noted that Article 3 of Council Regulation 2022/2577 does not exempt Member States from obtaining the appropriate assessment of Article 6(4) of the Habitats Directive but only allows them to presume an overriding public interest. The objective of shortening the authorization deadlines for renewable energies has not been achieved. The shortening of deadlines resulting from the declaration of public interest is minimal. Still, the appropriate assessment procedure has to be carried out, which is most time-consuming in these cases. It, therefore, seems clear that the proposed measure contradicts the principle of proportionality.

Therefore, these measures are leading to significant sacrifices in protecting the environment and biodiversity. In this regard, it should be remembered that we are not only immersed in a climate crisis but also in a biodiversity crisis.[36] And as *Fit for 55* warns, both crises cannot be solved separately. In this context, the EU's energy and climate policy, which was born as a response to the commitments made in the framework of the Paris Agreement 2015, has been characterized by addressing the climate and biodiversity crises in an integrated manner.

However, the urgencies arising from the energy crisis that have engulfed Europe with Russia's invasion of Ukraine have marked a shift in the EU's energy and climate policy. This is a shift that seems to abandon the scheme of reconciling climate objectives with environmental protection and subordinating energy security to the sustainability-climate change duality. Instead, it proposes *a model in which policy is built around energy security and the*

36. Pörtner, H. et al. 'Overcoming the coupled climate and biodiversity crises and their societal impacts', *Nature*, 380 (6642), 21 April 2023.

fight against climate change, with environmental protection taking on an ancillary role.

Thus, for example, Directive 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources,[37] which is part of the Green Energy Package, uses Article 194 (2) of the Treaty on the Functioning of the European Union (TFEU) as a competence title, which relates to measures to ensure the energy policy objectives set out in Article 194 (1), functioning of the energy market, security of energy supply; energy saving and efficiency as well as the development of new and renewable energies; and interconnection of energy networks. This competence title is generally used by almost all renewable energy related legislation. However, Council Regulation (EU) 2022/2577 uses Article 122 (1) TFEU as a competence title, which gives the Council the power to decide, on a proposal from the Commission, on measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

Moreover, Article 1 of Council Regulation (EU) 2022/2577 expressly states that it establishes temporary emergency rules to speed up the permitting process for renewable energy and associated technologies. Article 10 confirms this temporary character by saying that the Regulation shall apply for eighteen months from its entry into force. However, the temporary measures will have much longer effects, as renewable energy projects have more than 20 years of lifespan. It is, therefore, difficult to understand that temporary, emergency measures can provide the legal foundations for infrastructures that will be in place for a period far exceeding the Council Regulation's duration.

Furthermore, with Council Regulation (EU) 2022/2577, the EU has decided to transform the public law of the member states through measures that affect their autonomy to adopt their administrative procedures in environmental matters, free from interference by the EU in the field of the administrative procedures of the countries. This is part of the set of measures that the EU is adopting, which, as we pointed out, were unthinkable until recently.

Finally, there is perhaps the most contentious point of all: the two measures analyzed go against principles and environmental norms that have long been established in the EU. Thus, for example, these measures go against the principle of non-regression, according to which thresholds and standards of environmental protection already acquired should not be affected, nor should existing regulations be repealed or modified to reduce levels of protection already achieved.

37. OJ L 328/82, 21.12.2018.

On the basis of this analysis, we believe that the EU should once again reformulate its energy and climate policy to change course and return to a balanced policy, where environmental protection regains its fundamental role in light of the pernicious effects that a policy excessively conceived in terms of energy security, without being adequately balanced by the sustainability dimension, could have on the recovery of biodiversity.

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