



## RED III, wind energy projects and bats

The legal challenges of wind power: a simulated negotiation on renewable energy, nature conservation and the local community



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## Structure of the Role-Play:

1. Introduction (15 min)
2. Time to prepare in groups (30 min)
3. The proceedings (30 min)
4. Discussions about the outcome (15 min)



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The Renewable Energy Directive EU/2018/2001 was revised in 2023:

## RED III - Directive EU/2023/2413

- Entered into force on 20 November 2023.
- Includes provisions that simplify permitting processes to help set renewable energy projects in motion:

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## Definition of “renewable energy”, Article 2 (1)

“energy from renewable sources” or “**renewable energy**” means energy from renewable non-fossil sources, namely

- wind, solar (solar thermal and solar photovoltaic) and geothermal energy,
- osmotic energy,
- ambient energy,
- tide, wave and other ocean energy,
- hydropower,
- biomass,
- landfill gas,
- sewage treatment plant gas, and
- biogas;

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Rules on administrative procedures and environmental permitting  
Articles 15, 15b-15e and 16-16f.

Member States shall ensure that the national rules concerning the authorisation, certification and licensing procedures applied to plants and transmission for renewables are

- **proportionate and necessary** and contribute to the implementation of the energy efficiency first principle.
- **streamlined** and expedited at the appropriate level and **given predictable time frames**.
- **objective, transparent, proportionate, and non-discriminatory**.

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## “Renewables acceleration area”, RAA, defined in Article 1(9a)

“renewables acceleration area” means **a specific location or area**, whether on land, sea or inland waters,

which a Member State designated as **particularly suitable for the installation of renewable energy plants**;

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## Permit-granting procedures in RED III (Article 16a)

### Time limits!

Projects within RAAs are **presumed to not cause any significant effect to the environment** according to

- Article 4(2) in the EIA Directive (2011/92) or
- Article 6(3) of the Habitats Directive (92/43)

### Screening (45 days):

- The Positive Silence Rule
- An EIA/AIA within 6 months
- Wind and solar projects might be exempted if proportionate measures

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## Procedure outside RAAs (Article 16 b)

- Different time limits!
- EIA in a single procedure
- Mitigation measures – killing or disturbances not deliberate

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## The Case

Two wind power projects have been authorized by the competent authority in a region.

1. A wind project situated in the forest is an area designated as part of a Renewable Acceleration Area (RAA) under Directive EU/2023/2413.
2. A wind project, very close to a residential area, just outside a RAA.



Both projects face opposition: **local residents and an ENGO have appealed!**

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## The roles

1. Residents in the area – you decide who you are! Appellants; want the authorization **to be annulled**.
2. *The BattyGuard Alliance*, an Environmental Non-Governmental organization. Appellant; wants the authorization **to be annulled**.
3. *Windsy Whirl Innovations*, the Wind Power Developer wants to keep its authorisation (**opposes the granting of the appeals**).
4. Local Government/City Council in the *City of Windminster*.  
Doesn't want to contradict its citizens and wants to appear as environmental friendly, what ever that is; green energy or protecting bats... are there actually any bats there?

### 1. The court.

You create your own roles and put forward the arguments that you believe will lead to the desired legal result.

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## The bat



Name: *Myotis bechsteinii*

Diet: Insectivore

Habitat: This species is typically found in old growth and mature temperate forests and woodlands. It primarily relies on tree holes (natural features, woodpecker holes etc) to sleep in, but will use bat boxes and occasionally buildings.

Global Conservation Status (IUCN): Near Threatened, Vulnerable

Protected by:

- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
- UNEP/EUROBATS Agreement on the Conservation of Populations of European Bats (under the Convention on the Conservation of Migratory Species of Wild Animals, Bonn)
- Convention on the Conservation of European Wildlife and Natural Habitats (Bern)

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Let the play  
begin!



## Decision

The Authority grants Windsy Whirl Innovations permission to establish and operate the proposed wind turbines on the properties Batholt 2:15, Batarp 1:2, Carlshutte 1:15, 1:19, and 1:49, among others, in Windminster Municipality.

- For wind turbines outside an acceleration area for renewable energy (RAA), the maximum permitted height is set at 150 metres.
- For wind turbines within the RAA, the maximum permitted height is set at 185 metres.

The permit also includes associated infrastructure such as foundations, assembly areas, roads, cables, transformers, and substations.

The permit is valid for 35 years from the date the decision gains legal force. The Environmental Impact Assessment (EIA) has been approved, incorporating provisions related to the streamlined procedures within RAAs as outlined in Directive 2023/2413.

## Conditions

Unless otherwise specified in the conditions, the operations must adhere substantially to the commitments made by the applicant in the submitted documents or in any other undertakings during the handling of this case.

### *1. Location of Turbines*

The wind turbines must be installed according to the coordinates provided in the application, with a permitted variation of 100 metres.

### *2. Noise Levels at Residences*

Noise levels at the exterior of the nearest sensitive receptors (residences) must not exceed an equivalent noise level of 40 dB(A) at any time.

Compliance shall be verified through near-field measurements and calculations within one year of the wind farm's operational start date. Additional checks must be conducted whenever significant operational changes occur, or upon the supervisory authority's request, but at least every five years.

### *3. Construction and Restoration Noise Levels*

During construction and restoration, noise levels must not exceed:

- 60 dB(A) during weekdays from 07:00 to 19:00,
- 50 dB(A) during weekdays from 19:00 to 22:00,
- 50 dB(A) on weekends and public holidays from 07:00 to 19:00, and
- 45 dB(A) during all other times.

These values shall be monitored through emissions or near-field measurements and calculations. Each measurement period must cover no less than one hour. Further details will be provided in the control programme.

#### *4. Shadow Flicker*

Wind turbines must not cause moving shadows at sensitive locations (such as residential areas) for more than 8 hours per year. Sensitive areas include outdoor spaces used for recreation, work, or rest, measuring up to 25 m<sup>2</sup> adjacent to homes.

Compliance must be verified through calculations or measurements for residences that are predicted to experience more than 8 hours of shadow flicker annually.

#### *5. Obstacle Lighting and Visibility*

Windsy Whirl Innovations must implement a dimming system for obstacle lighting when visibility conditions allow, or a similar system with equivalent effectiveness. Flashing lights on turbines must be synchronised.

#### *6. Operational Stoppage for Bat Protection*

Wind turbines must be shut down with stationary blades when the average wind speed over 10 minutes is less than 6 m/s at rotor height, and the temperature exceeds 14°C, between sunset and sunrise from 15 July to 15 September.

This requirement does not apply in cases of heavy rain or fog, as bats are unlikely to be active in such weather.

#### *7. Uniform Design*

All wind turbines must have a uniform and discreet design and colour scheme.

#### *8. Completion Notification*

Windsy Whirl Innovations must notify the supervisory authority within one month of completing construction.

#### *9. Decommissioning and Restoration Plan*

Upon cessation of operations, Windsy Whirl Innovations must submit a decommissioning plan to the supervisory authority within six months. The plan must include details for the removal of turbines and restoration of the site. Full decommissioning must be completed within the 35-year permit period.

#### *10. Removal of Turbines*

All turbines and associated equipment must be removed within two years after decommissioning, unless otherwise approved by the supervisory authority.

#### *11. Control Programme*

A monitoring programme must be submitted to the supervisory authority prior to the start of construction work.

### *12. Financial Security for Restoration*

Windsy Whirl Innovations must provide financial security for post-operation restoration, amounting to SEK 700,000 per wind turbine, with the full amount approved before operations commence.

### *13. Updated Noise and Shadow Calculations*

Once the exact turbine locations are finalised, Windsy Whirl Innovations must submit updated noise and shadow flicker assessments to the supervisory authority based on these finalised placements.

## The case

The application, including the Environmental Impact Assessment (EIA), was submitted on 10 August 2024. The application was publicly announced, and comments were received from the public and stakeholders. Windsy Whirl Innovations responded to these comments, and the Authority has taken these responses into account.

## The Authority's Considerations

### Environmental Impact Assessment

The Authority acknowledges that Windsy Whirl Innovations has conducted an Environmental Impact Assessment (EIA) for turbines located outside the Renewable Energy Acceleration Area (RAA), fulfilling the standard requirements of the [national legislation implementing the Environmental Impact Assessment Directive (Directive 2011/92/EU)].

For turbines located within the RAA, a Strategic Environmental Assessment (SEA) was conducted as part of the planning and designation of the RAA, in line with the requirements of [national legislation implementing Directive 2001/42/EC]. As per [national legislation implementing Directive 2023/2413], projects within RAAs benefit from a presumption of minimal environmental impact.

The Authority has reviewed the EIA and finds that the applicant has adequately addressed potential environmental impacts, particularly regarding noise, shadow flicker, and the protection of bats and other species. The mitigation measures proposed by the applicant, such as turbine shutdowns during key periods to protect bats, are deemed sufficient to reduce the environmental impact to acceptable levels.

### Location and Species Protection

The location of the wind turbines, both inside and outside the RAA, has been assessed for compliance with species protection regulations, including the [national legislation implementing the Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC)].

The Authority notes that the bat protection measures—including the shutdown of turbines during high-risk periods for bat mortality—are necessary and in line with scientific recommendations. These measures are expected to reduce bat mortality by up to 90%, ensuring compliance with species protection laws.

### Noise and Cumulative Impact

Noise is a significant concern for residents near the wind turbines. The Authority confirms that the 40 dB(A) limit will protect residents from excessive noise, and the applicant has demonstrated that this threshold will not be exceeded, even when considering cumulative noise from multiple turbines. Regular monitoring, as required in the conditions, will ensure ongoing compliance with noise regulations.

### Shadow Flicker

The applicant has proposed a shadow flicker management system that will automatically shut down turbines during periods when shadow flicker exceeds the 8-hour limit for residences. The Authority finds this system to be effective in mitigating the impact of shadow flicker on nearby residents.

### Lighting and Obstacle Marking

To minimise light pollution, the Authority has required the use of a dimming system for obstacle lighting. This system will automatically reduce light intensity during clear weather, thereby minimising the disturbance to nearby residents while maintaining aviation safety.

### Bats and Other Protected Species

Given the critical importance of bats and other species protected under EU law, the Authority has imposed conditions to protect these species from turbine-related mortality. The requirement to shut down turbines during periods of high bat activity is consistent with scientific studies that demonstrate a significant reduction in bat deaths when such measures are implemented.

### Summary

The Authority concludes that, based on the commitments made by Windsy Whirl Innovations and the precautionary measures included in this permit, there are no remaining obstacles to the approval of the proposed wind turbines, both inside and outside the Renewable Energy Acceleration Area (RAA). The Authority is satisfied that the applicant's proposals comply with the relevant EU and national environmental laws, including [national legislation implementing Directive (EU) 2023/2413], and that the environmental impacts have been mitigated to acceptable levels.