Amendment: Contribution on Notification 2025/0164/AT – Upper Austrian Spatial Energy Planning Ordinance Part 1: Exclusion zones

23 June 2025

Dear Sir or Madam,

In addition to our submission dated 7 May 2025, we hereby wish to raise further and substantial concerns regarding the ongoing notification process of the Upper Austrian Exclusion Zones Ordinance (Spatial Energy Planning Ordinance, Part 1).

It has recently come to the attention of IG Windkraft that Policy Officer Vera Kissler from the European Commission had already informed the State of Upper Austria in February 2025 that the measure in question does not require notification under EU law, particularly because the ordinance is not an implementation measure related to Renewables Acceleration Areas (RAAs) under Directive (EU) 2018/2001 as amended by RED III. In light of this, it is deeply concerning that the State has nonetheless chosen to submit the ordinance through the TRIS notification system, which is designed for entirely different regulatory contexts.

This action not only disregards the Commission's clearly communicated legal assessment but also misuses the TRIS procedure as a political tool to deflect criticism and artificially elevate the perceived legality of a measure that raises serious concerns under both EU environmental and internal market law. It gives rise to the appearance of a calculated attempt to manipulate EU administrative processes in order to grant a semblance of legal validity to an ordinance that, by substance and procedure, fails to meet the standards of Union law.

Such conduct risks undermining the authority and integrity of the TRIS mechanism and places the Commission in a position of involuntary complicity, should no public clarification or critical response be issued. Silence from the Commission could—and likely would—be misinterpreted by the Upper Austrian Government as tacit EU approval, despite the contrary interpretation already communicated.

We therefore respectfully request that the Commission issue a critical opinion addressing the following points:

- Initiate a detailed and substantiated TRIS opinion under Directive 2015/1535 during the current three-month standstill period, explicitly outlining in what respects the draft ordinance conflicts with EU law—particularly internal market, energy, and environmental directives. If necessary, extend the standstill period to allow for comprehensive review.

- Issue a technical assessment that highlights the following:

    - the absence of a Strategic Environmental Assessment (SEA) in breach of Directive 2001/42/EC;
    - the failure to designate any Renewables Acceleration Areas (RAAs) as required under RED III (Art. 15c);

- the broader implications of these omissions for the implementation of the Union's climate and energy targets;
- and clear recommendations for the revision or withdrawal of the ordinance in its current form.

- Ensure compliance with the standstill obligation, and withhold any de facto recognition or approval of the notified ordinance until the State of Upper Austria has made the necessary legal and procedural corrections.

- In the event that the ordinance is enacted without proper amendment, we urge the Commission to initiate infringement proceedings under Article 258 TFEU, citing failure to properly transpose and implement RED III, as well as violations of the SEA Directive and the internal market principles enshrined in the Treaties.

- Clarify publicly that the mere initiation or completion of a TRIS notification procedure does not in any way constitute legal validation or compatibility with other areas of EU law, including RED III. This distinction is crucial in preventing political misinterpretation or misrepresentation at national level.

- Lastly, we highlight that the submitted draft is materially incomplete: the ordinance refers to spatial "annexes" that define the exclusion zones but fails to include these documents in the notification package. This lack of essential documentation renders the notification procedurally defective and substantively unverifiable, thereby invalidating its transparency and legal clarity requirements under Directive 2015/1535.

We also ask the Commission to explicitly confirm that the outcome of the TRIS notification procedure has no bearing on the legal conformity of the ordinance with RED III or other Union legislation.

As already stated in our previous submission, the Exclusion Zones Ordinance seriously jeopardizes the proper implementation of RED III in the following ways:

1. **Mandatory mapping exercise (Article 15b RED III)**
   Member States must complete, by 21 May 2025, a coordinated mapping of all land, sea and inland-water areas needed to achieve their national renewable-energy contributions toward the EU's target of at least 42.5 % by 2030. Excluding areas wholesale before this data-driven mapping is finalized directly conflicts with RED III's objective and undermines the evidence-based approach enshrined in Article 15b.

2. **Designation of Renewables Acceleration Areas (Article 15c RED III)**
   By 21 February 2026, Member States must designate within the mapped areas specific renewables acceleration areas (RAAs) for one or more technologies, where deployment is "not expected to have significant environmental impacts." The current draft omits any positive RAA designation and instead imposes blanket exclusions, thwarting the strategic purpose of RAAs to expedite permitting and investment.

3. **Permit-acceleration deadlines (Article 16a RED III)**
   Within RAAs, RED III caps permitting procedures at 12 months onshore, with simplified environmental requirements once an area-level Strategic Environmental Assessment is complete. Without designated RAAs, there is no legal basis for these accelerated timelines, therby defeating one of RED III's core aims.

4. **Strategic Environmental Assessment (Directive 2001/42/EC)**
   Plans or programmes likely to have significant environmental effects – including zoning for energy infrastructure – must undergo a Strategic Environmental Assessment (SEA) before adoption. The draft Upper Austrian ordinance lacks any SEA, in breach of both the SEA directive and RED III's transparency provisions.

Member States must contribute to achieving the EU's binding renewable-energy target of at least 42.5 % by 2030. The European Commission's Guidance on designating Renewables Acceleration Areas[1] explicitly warns that Member States "should not create new no-go areas" outside of the designated RAAs.

We trust in the European Commission's commitment to upholding the rule of law, and ensuring that ambitious Union legislation such as RED III is implemented coherently, transparently, and in good faith. We respectfully request that this case be treated with the seriousness it warrants, in light of the precedent it may set for other Member States.

Martin Bursík, EREF President, comments: "When national authorities attempt to instrumentalise EU law for political purposes, the Commission must respond clearly and firmly. The TRIS procedure cannot be misused to lend legitimacy to measures that fall short of Union law. Undermining legal certainty in this way not only stalls the energy transition but also weakens trust in the application of EU law across the internal market. The enforcement of the 'acquis communautaire' is of high value in the European Union."

We remain at your disposal for any further information or discussion.

Yours faithfully,

Florian Maringer	**Martin Bursík**	**Giles Dickson**
Managing Director	President	Chief Executive Officer
IG Windkraft Austria	EREF	Wind Europe

[1] European Commission. Directorate-General for Energy. (2024, May 13). *Guidance on designating renewables acceleration areas* (SWD).