EREF position paper

Response to the public consultation of the European Commission concerning the EU initiative for renewable energy projects – permit-granting processes & power purchase agreements (12 April 2022) and call for adequate amendments under the current legislative debate concerning the amendments to the renewable Energy Directive (RED III Process)

EREF is the European federation of national renewable energy associations from across EU Members States representing all renewable energy sectors. Since more than 20 years, the federation defends the interests of independent power, fuel and heating and cooling-production from renewable sources and promotes non-discriminatory access to the energy market. EREF strives to create, maintain and further develop stable and reliable framework conditions for renewable energy sources, strongly advocating for the full decarbonisation of the European energy systems and markets, which need to be transformed and based on 100% more decentralized generation from all renewable sources.

EREF supports this EU Commission's initiative that an „EU level guidance is needed to highlight the most pervasive permit-related and administrative barriers to renewable energy projects as well as general challenges in the transposition of the relevant articles of the Renewable Energy Directive, and to showcase corresponding examples of good practice". There is indeed „a need to highlight the remaining obstacles preventing PPAs from reaching their full potential to deliver additional renewables generation capacity, and to provide good practice examples/solutions in this regard"

Permit-granting processes and administrative procedures can be regarded as the biggest bottlenecks for a fast and large-scale renewable energy development in the EU.

We do have several comments and would like to encourage the Commission to integrate them in its planned guidance document. EREF will focus on the first part, the permit granting processes. EREF is convinced that the setup of this guidance document needs to go hand in hand with further efforts the EU institutions need to do under the current legislative procedures, e.g., the REDIII debate. We furthermore call for more flexibly under the CEEAG rules.

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1. The EU Commission must opt for more ambition and must include guidance for all forms of renewable energy – in her guidance document and in the current legislative process under RED III.

In addition to the urgent need for rapid decarbonisation as a prerequisite for meeting the Paris climate target and as highlighted in the last three IPCCC reports, the Russian aggression and war in Ukraine also clearly shows the weaknesses of an energy system dependent on energy imports, and particularly on imported fossil fuels. The rapid expansion of all available renewable energies is not only of relevance for climate policy, but also of great importance for energy security as well as jobs and economic value creation.

a) Ensuring a greater ambition- can be reached by good practices for acceleration of roll-out in the EU Member States

EREF welcomes that the Commission underlines the further increase of RES targets, as set by the 'EU Commission under its RED III proposal, with at least 40 % share of RES by 2030. But we underline that, in line with the climate urgency, this target needs to be further increased in the legislative process. Already, the Rapporteur in the European Parliament for RED III calls for minimum of 45 %. The brutality of the Russian aggression pushes for more effort to change our dependency from oil, gas and uranium sources. We most probably need a minimum increase of 50% by 2030 under the new RED III legislation. Therefore, increased urgency and respective guidance for speed needs to be integrated in the document of the EU Commission.

b) Ensuring that all RES sources are on call for increased share and effort – in all Member States

Accelerating the transition to renewable energy sources is absolutely the solution – but increasing just the quantity alone is not enough. Diversifying supply has always been a core principle of energy system security. And Europe is blessed with a wealth of different renewable energy sources.

Together with wind and solar PV, Europe can rely on a broad range of other sustainable sources, including geothermal, solar heat, wave, hydro, concentrated solar power, bioenergy, biogas, and tidal energy. EREF's RESTOR Hydro database for example lists more than 50,000 abandoned and potentially ready to activate small hydropower sites in EU Member States, out of an estimated number of 280,000. Collectively these renewable sources can provide decarbonised energy at any point in the day, season or year, and keep our systems in balance, especially on local and

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regional level. Sustainable small hydropower is an asset within the 100 % RES policies of many regions across the European Union. EREF deplores a certain scapegoat attitude to bash small hydropower and to discriminate this traditional renewable energy source which can proudly stand up in any life cycle and sustainability contest.

2. Renewable energy as "overriding public interest and in the interest of public safety"- for MS guidance and for RED III

Due to the climate crisis and the new geopolitical situation, renewable energy projects must be considered as being of overriding public interest" and responding to the interest of public safety. This implies that faster permitting and planning for renewable energy projects and their connection to the grid is the most important order of these days.

EREF calls on the Commission to advise Member States to explicitly acknowledge the public interest and to use the exemption clause under the Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora and Natura 2000 policies. EREF supports the clarifying amendments from the Rapporteur of the European Parliament of the RED III Directive, underlining the importance of renewable energy deployment as of public interest. This means an explicit exemption clause allowing for renewable energy plants in areas under Habitat, Water Framework and Birds Directive application. It also must be included in the upcoming nature restoration law proposal. And this recommendation on fast permitting for renewable energy projects should be included in this proposal.

The establishment of „no-go-areas" principles for renewables from an EU guidance document could be counterproductive. Underlining once more the established evaluation principle under the Natura 2000 legislation, that even in Natura 2000 areas and in case of potential for a significant impact, renewable energy projects may be approved for imperative climate reasons of overriding public interest. Member States can certainly designate such area in line with their legislation, applying the principle of overriding public interest and the interest of public safety.

Environmental impacts of renewable energy can be prevented by adequately planning, siting, designing and using latest technical solutions. Wind farms can have positive effects on biodiversity by helping to preserve habitats and ecosystems. Once wind farms have been built their sites are left undisturbed for many years. Many onshore wind farms contain areas of pollinator-friendly habitat.

In EREF's position paper for current debate for the RED III, we specifically pinpointed the clear introduction of the Public Interest principle for RES to be rolled out especially in view of the Birds Directive, Natura 2000 rules and the FHH- Directive. We are very much pleased that the Rapporteur introduced many of these amendment s proposals in his report.

Concluding this, the EU Commission has to guide insurance on the public interest as shown above. This is a crucial issue for companies, and we see this as the biggest lever for the expansion of wind and small hydro power. In this way, the EU could contribute the most to easing the approval process.

The legislative procedure for RED III has not yet been completed. It would be obvious that RED III ensures thus an exemption for RES installations with regard to the protection of species under public interest concern, including a clear reference in the recitals that RES installations contribute significantly to preserving the livelihoods of nature and the landscape and the habitats for humans, animals and plants or to counteracting their endangerment and that, when approving RES installations as measures of sustainable development and active climate protection, it must therefore be taken into account that these measures are also in the interest of nature and species conservation and that the associated interests must be taken into account in nature conservation legislation.

RED III should provide wording that the planning, construction, and operation of plants for the production of energy from renewable sources, their connection to the grid and the corresponding grid itself are considered to be in the overriding public interest and in the interest of public safety and are eligible for the most favourable planning and authorization procedure.

3. Measures for faster permitting processes

To ensure faster permitting processes and in view to non-discriminatory overall principles for good permitting and planning in this context, project planners should have easy and fast rules in all Member States. This also ensures a more disciplined approach of the respective authorities; avoids unnecessary loops in the permitting process; and gives security to planning projects.

Existing processes on permit-granting on grid connection are still too complex and take up to several years, including lengthy disputes between project developers and

e.g. neighbours or nature protection organisations. Complicated permitting processes are a major contributor to exploding costs for a project development timeline.

Therefore, EREF urges the EU to support the further implementation of simpler and faster permitting rules and procedures with such guidance underlining and focussing on good practises on permitting per barrier point. These should cover good practices and guiding principles the following areas and for all renewable technologies:

- Effective single contact points („one-stop-shops") and good training of administrative staff
- Overcoming constraints from lengthy Court proceedings
- Military and civil aviation constraints (*Beweislastumkehr*)
- Civil resolution and mediation as enabler and not as obstacle
- Factoring technology development in the permitting process for flexibility- - principle of open-type approval to be guaranteed
- Spatial planning priorities for swift permitting
- Planning guidance in FFH and Natura 2000

Article 16 of current RED requires member states permit new renewable energy installations within 3 years and repowered ones within 2 years. Additionally, the EU Governance regulation requires Member states to outline concrete measures. As implementation on the national level is slow, the Commission should provide guidelines to governments to support and encourage the national implementation process.

Good examples for fast permitting can be drawn from analysis of Member States' practices, relevant EU financed projects such as RES Simplify and exchange with stakeholders. The Commission might look for examples for faster permitting rules in the United States, e.g., in the State of Colorado1.

1 Pilot Program for small hydropower projects that resulted from an MOU between the state of Colorado and the Federal Energy Regulatory Commission (FERC). This program was designed to acilitate low-impact hydropower projects by coordinating the efforts of state and federal agencies with project developers and stakeholders to streamline the permitting process; https://www.naseo.org/data/sites/1/documents/publications/NASEO-Best-Practices-Review--Streamlined-RE-Permitting-Initiatives.pdf

4. Further tasks the EU Commission must do herself: facilitate the CEEAG rules

EREF calls on the EU Commission to ensure a temporary relief in state aid law for renewable energies. Thus, a relaxation of the incentive effect could be of great benefit. Due to the long delivery times of technology, such as turbines, it is a major problem that the order for the turbines can only be placed after subsidy contracts have been awarded. Here, some relief should be achieved to the effect that it is state aid rules neutral, if orders or down payments have already been made.

Final remark

We outline some obstacles which EREF members frequently face in the annex hereafter. They should be evaluated by the EU Commission in view of the transposition of the RED II Directive and related legislation in national legislation by the EU Member states as well as for the RED III debate and the guidance document.

Annex

Overview on selected recurrent obstacles

1. Administrative process

Complexity and transparency of administrative procedures

Wind onshore is the technology which is the most highly impacted but marking other technologies are deeply impacted as well, including rooftop PV.

Duration of administrative procedures

The duration of administrative procedures has a high negative impact on wind and solar energy deployment. Onshore wind and PV ground-mounted plants are especially affected.

In some countries such as Estonia, Finland and Slovenia, the duration of administrative procedures can be so long that by the time these are concluded, the renewable energy

project might not be economically viable anymore, as the technology has become outdated or obsolete in the meantime.

Integration of renewable energy in spatial and environmental planning

Distance rules in place force project developers to pursue projects further away from human settlements. However, that can increase the conflicts with environmental protection objectives, the latter being very common across Europe, especially in the case of onshore wind.

Another issue is the perceived mismatch between classification of agricultural/arable land and agricultural objectives vis-à-vis solar energy deployment. Dual-use approaches to renewable energy production, such as agrovoltaics, could pose an attractive alternative in such cases.

Conflicts with third parties

Public opposition from NGOs, environmental groups or right-wing parties often delay or stall renewable energy projects, especially onshore wind.

2. Grid regulation and infrastructure

The core issue related to the electricity grid is insufficient grid infrastructure to transmit the electricity generated by solar PV and wind plants within and between Member States. Overall, the problem is well understood, but expanding grid capacities has remained painstakingly slow. Until grids are sufficiently reinforced, renewable energy installations will suffer the consequences, particularly in terms of grid connection costs or transparency of grid connection procedures.

Costs of grid access for renewable energy

Many EU Member states report high costs of grid access as being a hindrance for the deployment of solar PV and wind projects. In Austria, for example, grid connection costs for ground-mounted solar PV systems often account for more than 20% of total investment costs.

In other countries, renewable energy plants face costs higher than that of their conventional counterparts. The example from Bulgaria shows that solar PV and wind

installations are subject to a grid access fee that is twice as high as conventional power plants.

Predictability / transparency of connection procedures

DSOs often refer to technical issues or a lack of grid capacity to reject connection permits for renewables.

The lack of harmonized grid connection requirements among DSOs is confusing and decreases the diffusion of renewables. DSOs require different documents and sometimes their interpretation of the applicable legal framework differs.

Issues regarding connection of biomethane production to the gas grids

Lack of legislation/regulatory framework ensuring quick, fair, clear and transparent treatment of grid connection requests from project developers, including those located outside gas-served areas. This includes uncertainty for producers and TSO/DSO in the authorization process due to unclear bureaucracy framework (i.e. expected timing, specific procedures, etc...)

Lack of incentive or clear rules giving priority access and competitiveness in terms of market price to renewable gas against fossil gas in order to provide firm capacity to biomethane

a. Legal gap or regulatory limits for cost sharing of grid connection:
    - Cost of grid connection fully borne by the project developer
    - Grid operators not allowed to pay for a share of grid connection and limited by a low ceiling
b. Lack of clear regulatory principles on investment responsibilities and operational cost sharing between TSOs and DSOs for reverse flow units.