Feedback regarding the proposal for a Directive amending Directives 2018/2001, 2010/31 and 2012/27 on Renewable energy projects – permit-granting processes & power-purchase agreements

Brussels, 27 July 2022

The European Environmental Bureau (EEB) welcomes the unprecedented boost in renewables envisaged in the European Commission's proposal. Deploying millions of solar panels and heat pumps, coupled with building renovation and energy efficiency measures, will take us one step closer to being on track with our Paris Agreement Commitment and will constitute a no-regret option for Europe to strengthen its energy security at times of rapid geopolitical changes.

This response summarises our main concerns on the proposed changes to the Renewable Energy Directive with respect to facilitating renewable energy permitting and deployment, building on the recent EEB's policy brief on Nature-Friendly Renewable Energy. The latter outlines the challenges and potential solutions related to a broad spectrum of environmental and social impacts of different renewable energy technologies, and it suggests corresponding policy recommendations for EU decision-makers to guide the renewable energy roll-out in a nature-friendly, people-centric way.

While stepping-up ambition on enhancing renewable energy capacity is a much-awaited step forward, this should not be achieved at the expense of protecting and restoring ecosystems and biodiversity. In fact, the climate and biodiversity crises are deeply intertwined and must be tackled in a comprehensive manner. **The Commission's proposal fails to address these two crises in a synergistic way and risks undermining fundamental nature protection safeguards and the rule of law** by:

- *De facto* amending fundamental nature protection legislation (the Environmental Impact Assessment Directive, the Water Framework Directive as well as the Birds and Habitats Directives) through the backdoor – despite nature protection legislation not being a barrier to the needed upscale of renewable energy as was also the outcome of the 2016 Fitness Check that established that the Nature Directives were clearly fit for purpose and needed to be implemented better;
- Excluding the public from environmental decision-making at the project level and denying access to justice in environmental decision-making, in conflict with the Aarhus Convention;
- Failing to achieve the stated aim of the permitting proposal to speed up the development of renewables due to:
    - Heightened legal uncertainty for renewables developers due to new parallel procedures and amendments to clearly interpreted and well-established provisions;
    - Uncertainty due to presumption of compliance that will leave developers with unclear obligations;
    - Failure to tackle the real administrative bottlenecks (lack of staff, training, etc.) while proposing short deadlines for screening processes.

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International non-profit association ● Association internationale sans but lucratif (AISBL) ● EC register for interest representatives: ID number: 06798511314-27 ● BCE ID number: 0415.814.848 ● RPM Tribunal de l'entreprise francophone de Bruxelles

- Bypassing the required consultation processes by not consulting on *de facto* amendments to cornerstone legislation and failing to carry out an impact assessment.

We welcome the Commission's proposal to require Member States to identify renewables 'go-to areas' in which renewable permitting can be streamlined. However, defining 'go-to areas' must be based on **robust spatial planning and sensitivity mapping** to identify suitable areas for renewables development due to their low environmental risk profile. At the same time, **careful spatial planning must also guide the designation of space for nature** to make sure that EU obligations such as on protected and strictly protected areas, Natura 2000 sites, other protected areas, reserves, and restoration areas are met.

Streamlining permitting procedures in 'go-to areas' should not be implemented through a blanket exemption from **Environmental Impact Assessment (EIA) requirements**. Instead, sound Strategic Environmental Assessments (SEA)s that include site- and project-specific assessments and the consequent EIA screening process will already reduce the need to carry out EIAs, as these would likely be deemed unnecessary in 'go-to areas' during the screening process. Existing environmental safeguards remain key because on the one hand they do not slow down permitting, and on the other hand they provide clarity and predictability for both developers and permitting authorities.

The identification of 'go-to areas' is an essential step in the process, but it should include **appropriate public participation procedures** to ensure that citizens and civil society are involved in the process of site designation, as well as in the preparation and implementation of the necessary conservation measures. As EIA and appropriate assessment processes include public consultation requirements and guarantee the public the right to challenge the relevant decisions in court, the Commission's proposal to exempt renewable energy projects from appropriate assessment requirements foreseen under the Habitats directive is likely to run contrary to the Aarhus Convention. Finally, and with respect to social considerations, allowing renewable energy projects to avoid environmental impact assessments and appropriate assessments is likely to generate additional public resistance and slow down, rather than speeding up renewables development.

Much in the same vein, presuming renewable energy facilities and electricity grids to always be of 'overriding public interest' as proposed by the Commission will not ensure speedier renewable energy development and in turn would set a dangerous legal precedent which could lead to further environmental deregulation to the detriment of both climate action and nature protection, for instance if applied to the extraction industry. The assessment of imperative reasons of **overriding public interest (IROPI) must be based on a case-by-case basis following a project-specific assessment and all other requirements in the existing legislation must be met**.

Besides undermining fundamental environmental law provisions and thus creating uncertainty that will slow down the upscale of renewables, the Commission's proposal goes some timid way towards speedier permitting procedures by requiring Member States to establish single contact points to ensure that the deadlines of the permit-granting procedures are met. Moreover, the proposal includes some good provisions on moving to a fully digitalised process for renewable projects permitting applications. These are concrete steps in the right direction, but they fail to tackle the problems at the scale needed to **address the lack of administrative capacity and staffing** at all levels of permit-granting authorities, as this represents one of the main barriers to smooth and quick renewable energy permitting.

Additionally, the Commission's proposal fails to outline meaningful provisions on providing specific tools to help **Renewable Energy Communities (RECs)** to navigate administrative procedures to get projects approved and realised, including with respect to their grid connection. Giving priority to distributed, community-owned projects is of utmost importance considering the potential for RECs to greatly increase the degree of public acceptance of renewable energy projects.

For further details, please refer to EEB's policy brief on Nature-Positive Renewable Energy

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